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Federal Register

Wednesday
February 12, 1986

Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
Federal Crop Insurance Corporation
Interior Department

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Crop Insurance
Federal Crop Insurance Corporation

Fisheries
National Oceanic and Atmospheric Administration

Income Taxes
Internal Revenue Service

Meat and Meat Products
Agricultural Marketing Service

Medical Devices
Food and Drug Administration

Milk Marketing Orders
Agricultural Marketing Service

Price Support Programs
Commodity Credit Corporation

Radio
Federal Communications Commisssion

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center.
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center.
303-236-7181

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Wednesday, February 12, 1986

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service (1) changes the hourly fee rates for voluntary Federal meat grading and certification services and (2) establishes separate fee rates for services provided to commitment applicants and noncommitment applicants. These changes are being implemented on an interim basis without a prior proposal, because of the Agency's immediate need to increase revenue to cover the costs of providing service. The new fees are being published for comment as a means of providing full public participation in the rulemaking process.

DATES: Interim rule effective February 16, 1986; comments must be received on or before March 14, 1986.

ADDRESS: Written comments may be mailed to Eugene M. Martin, Chief; Meat Grading and Certification Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th Street and Independence Avenue, SW., Room 2638–S; Washington, DC 20250. (For further information regarding comments, see "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin (202/382–1113).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under the USDA procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to section 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined the rule will not have a significant economic impact on a substantial number of small entities. The changes in the hourly fee rates and the establishment of separate fee rates for services provided to commitment applicants and noncommitment applicants are necessary to recover the costs of providing voluntary Federal meat grading and certification services and reflect only a minimal increase in the current cost-per-unit of meat graded and/or certified. Additionally, the establishment of separate fee rates will make charges for services more commensurate with the actual cost of providing service.

Comments

Interested persons are invited to submit written comments concerning these interim amendments. Comments must be sent in duplicate to the Washington, D.C., Meat Grading and Certification Branch and should bear a reference to the date and page number of this issue of the Federal Register. Comments submitted pursuant to this document will be made available for public inspection during regular business hours.

Background

The Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat which they desire. The Act also provides for the collection of fees from users of Federal meat grading and certification services which are approximately equal to the costs of providing services. The hourly fees are designed to cover the program's costs of personnel salaries and fringe benefits, supervision, travel, training, and other administrative and overhead costs.

A fee increase is necessary to offset the reduction of 72,000 revenue hours for meat grading and certification services which the Agency experienced in fiscal year 1985 and to partially restore the program's depleted operating reserve fund. The dollar equivalent of 72,000 revenue hours is nearly $2 million. Since March 1985, the Agency has taken several actions to reduce its overall operating costs by nearly $1 million. These actions included (1) reducing the grading staff by nearly 10 percent, which will result in long term cost-savings of almost $775,000 and (2) closing one main station field office in September 1985, which will result in an annual cost-savings of slightly more than $150,000. While further substantial reductions in program management costs are planned during fiscal year 1986, most of the resulting savings will not be fully realized until the end of fiscal year 1986 or later. Therefore, without a fee increase, the Agency would expect to sustain a loss of nearly $1 million in fiscal year 1986.

Simultaneously with the fee increase, the Agency will establish separate base hourly fee rates for commitment applicants and noncommitment applicants in order to assess fees which more equitably reflect the cost of providing service. Currently, all applicants—commitment and noncommitment—are charged the same hourly fee rates for service. Agency records on revenue and operating expenses indicate that the cost of providing service to noncommitment applicants is substantially higher than the cost of providing service to commitment applicants.

A commitment applicant is a user of meat grading services who agrees to pay for 8 hours of service per day, 5 days per week, Monday through Friday. For purposes of applying the new fee rate, an applicant who guarantees the Agency 8 hours of revenue per day, Monday through Friday, whether by commitment or agreement by memorandum, will be assessed base hourly fees at the commitment rate. A noncommitment applicant is a user of meat grading services who requests services for a particular day and for the amount of time necessary to complete a specific task requiring official grading and/or certification. Noncommitment applicants pay only for the actual hours, plus travel time, during which they utilize a Federal meat grader. Since the Agency must be adequately staffed to provide services

upon request, including the "as-needed requests" from noncommitment applicants, the Agency incurs nonrevenue hours whenever the requests for services are not sufficient to fully utilize graders assigned to service these applicants.

The unpredictability of service requests from noncommitment applicants accounts for a major portion of the Agency's nonrevenue time. For example, two applicants might request service for 4 hours a day beginning at 6 a.m. To service both applicants, two employees must work 4 hours each, rather than one employee servicing both applicants. If there are no requests for meat grading and certification services after 10 a.m., the Agency has incurred 16 hours of personnel costs, while earning only 8 hours of revenue. Similarly, an applicant who requests service for 2 or 3 days per week on an irregular basis also contributes to the number of nonrevenue hours. Employees are guaranteed a 40-hour workweek, even if they are not fully utilized for the entire week. In an effort to meet requests for service on an "as-needed basis," the Agency has increased the use of intermittent and cross-utilized employees. Nevertheless, it is still necessary to maintain a work force adequate to meet all requests for meat grading service, so the Agency continues to incur higher personnel costs than are covered by the total revenue hours.

As an alternative to establishing separate rates, the Agency considered further increases in the base hourly fee rate to cover the added cost of providing services to noncommitment applicants. However, this alternative would result in commitment applicants, in effect, paying a portion of the additional cost of providing services to noncommitment applicants.

In view of the circumstances described above, the base hourly rate for commitment applicants for voluntary Federal meat grading and certification services is increased from $26.40 to $27.40 and will be charged to users of the services who agree, by commitment or agreement by memorandum, to the use of a meat grader for 8 consecutive hours per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly rate for noncommitment applicants for voluntary Federal meat grading and certification services is increased from $26.40 to $29.80 and will be charged to applicants who utilize a meat grader for 8 consecutive hours or less per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The premium hourly rate for all applicants is increased from $34.40 to $35.40 and will be charged to users of the service for the hours when a meat grader is utilized in excess of 8 hours per day, between the hours of 6 a.m. and 6 p.m., and for hours worked before 6 a.m. or after 6 p.m., Monday through Friday, and any time on Saturday and Sunday, except on legal holidays. The holiday hourly rate for all applicants is increased from $52.80 to $54.80 and will be charged to users of the service for all hours worked on legal holidays.

Pursuant to the authority in 5 U.S.C. 553, it is found that any other public procedure and notice with respect to these amendments are impracticable and unnecessary, and good cause is found for making these amendments effective February 16, 1986, on an interim basis. A final rule will be promulgated after evaluation of comments received in response to this notice.

Accordingly, the section of the regulations appearing in 7 CFR Part 54 relating to hourly fees for Federal grading and certification of meats, prepared meats, and meat products, is revised as set forth below:

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, and Pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, sec. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. 7 CFR 54.27 is amended by revising paragraphs (a) and (b) to read as follows:

§ 54.27 Fees and other charges for service.

* * * * *

(a) *Fees For Service on Noncommitment Basis (Hourly Rates).* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including the official grader's travel and certificate(s) preparation time in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate for noncommitment applicants shall be $29.80 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $35.40 per hour for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday except on Federal legal holidays; and $54.80 per hour for all work performed on Federal legal holidays.

(b) *Fees For Service on Commitment Basis.* Minimum fees for service performed under a commitment agreement or an agreement by memorandum shall be on the basis of 8 hours per day, Monday through Friday, excluding Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed. The base hourly rate for service performed under such agreements shall be $27.40 per hour for 8 consecutive hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $35.40 per hour for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday except on Federal legal holidays; and $54.80 per hour for all work performed on Federal legal holidays. The Agricultural Marketing Service reserves the right under such a commitment agreement or agreement by memorandum to use any grader assigned to the plant on a commitment basis to perform service for other applicants as provided in § 54.6(c), crediting the commitment applicant with the number of hours charged to the other applicant, provided the allowable credit hours, plus hours actually worked for the applicants, do not exceed 8 hours on any day, Monday through Friday, excluding all Federal legal holidays.

* * * * *

Done at Washington, D.C.: January 31, 1986.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 86-2961 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-02-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 2825S]

General Administrative Regulations; Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new Subpart J to Part 400 in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. The intended effect of this rule is to prescribe procedures under which a person or organization may request review of determinations made by FCIC. This rule sets forth the various levels of appeal and prescribes the manner and format of the appeal procedure. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The purpose of these regulations is to provide administrative procedures under which any person or organization may request and obtain review and appeal of determinations made by FCIC. The regulations contained herein set forth the levels of appeal and prescribe the manner and format of such procedure.

On Tuesday, August 13, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 32576, issuing a new Subpart 400 in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

Minor changes have been made by FCIC in the proposed rule as published. In Section 400.92, the word "Part" has been corrected to read "Chapter." Section 400.93 provided that a written request for an initial hearing may be made within 30 days of the date of notification by FCIC of the determination being appealed from, and § 400.100 provided that the Appellant may appeal from the determination of the Hearing Officer in an initial hearing within 30 days of the date of determination.

Both of these Sections have been amended to provide 45 days for such requests to be made in accordance with the regulations of the Office of Management and Budget (OMB) implementing the Paperwork Reduction Act as contained in 5 CFR 1320.6. Since OMB has determined that such request for initial hearing or appeal constitutes information collection, FCIC is required to provide that a respondent shall have not less than 30 days to prepare a written response to an information collection request or requirement after it is received by the respondent.

Finally, § 400.101 has been corrected by changing the word "part" to read "Subpart." Therefore, with minor changes in language and format as outlined above, the proposed rule is hereby adopted as a final rule.

Because the regulations contained in this subpart affect present policyholders wishing to file requests for review of, or appeal from, determinations made by FCIC, and providing these regulations setting forth the procedures for such actions is determined by FCIC to be beneficial to persons or organizations affected by such determinations, good cause is shown for making these regulations effective in less than 30 days and upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 400

Crop insurance, Administrative regulations—review and appeal procedure, Administrative practice and procedure.

Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby adds a new Subpart J to Part 400 of Chapter IV of Title 7 of the Code of Federal Regulations, to be known as 7 CFR Part 400, Subpart J—General Administrative Regulations; Appeal Procedure, to read as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart J—Appeal Procedure—Regulations

Sec.

Authority: Pub. L. 75-430, 52 Stat. 72 et seq., as amended, (7 U.S.C 1501 et seq.).

Subpart J—Appeal Procedure—Regulations

§ 400.90 Basis, purpose, and applicability.

The regulations contained in this part are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C 1501 et seq.), to prescribe the procedures under which a person may obtain review of determinations made by the

Corporation. The regulations are applicable to any request for review filed after the effective date of this part. The procedures contained herein also apply to requests filed prior to the effective date hereof to the extent that they do not adversely affect any party in those proceedings.

§ 400.91 Definitions.

Unless the context indicates otherwise, words importing the singular include the plural, and words used in the present tense include the future. For the purpose of these regulations:

(a) "Appellant" means any person who requests a review of a determination made by the Corporation and includes an authorized representative of the Appellant.

(b) "Authorized Representative" means a person designated in writing by an appellant to act for and on behalf of the appellant.

(c) "Contract" means a written agreement entered into by a person with the Corporation.

(d) "Contractor" means a person who is a party to a contract with the Corporation.

(e) "Corporation" means the Federal Crop Insurance Corporation or any authorized officer or employee thereof, as applicable.

(f) "Hearing Officer" means the individual designated or appointed by the Corporation to conduct an initial or appeal hearing.

(g) "Person" means individual, corporation, association, partnership or other legal entity.

(h) "Transcript" means the verbatim record of a hearing.

§ 400.92 Rights of appeal.

Appeal is available to:

(a) Any person determined to be indebted to the Corporation as a result of:

(1) Overpaid indemnities; or

(2) Non-payment of premium;

(b) Any person whose claim for indemnity under insurance obtained pursuant to this Chapter has been denied;

(c) Any person whose request for insurance provided for in this Chapter has been denied;

(d) Any party to a contract who has received notification of a determination by the Corporation regarding any terms or conditions of the contract between the person and the Corporation which the party disputes; or

(e) Any person whose request for relief under the Good Faith Reliance on Misrepresentation provisions of the crop insurance regulations contained in this Chapter has been denied in whole or in part.

§ 400.93 Requesting an initial hearing.

Written requests for an initial hearing must be received by the Director, Kansas City Operations Office, Federal Crop Insurance Corporation. P.O. Box 293, Kansas City, Missouri, 64141, within forty five days of the date of notification by the Corporation of the determination or action being appealed from. The request for the hearing must be signed by the Appellant; contain a statement of the matter on which the hearing is sought; and a statement of the Appellant's reasons that the determinations or other matter appealed from is incorrect.

§ 400.94 Notice of hearing.

Written notice of the time and place of the hearing shall be given to the Appellant by Certified Mail, return receipt requested, at least thirty days prior to the date of the hearing. The Appellant may waive the requirements of this section.

§ 400.95 Appeal without appearance.

The Appellant may elect to waive appearance at a hearing and request that a determination be made on the basis of written material submitted by Appellant and other information available to the Hearing Officer.

§ 400.96 Absent Appellant.

If, at the time scheduled for a hearing, the Appellant is absent, the Hearing Officer may, after a lapse of such period of time as is deemed proper and reasonable, dismiss the hearing or may accept information and evidence submitted by other persons present at the hearing.

§ 400.97 Authority of Hearing Officer.

(a) The Hearing Officer has the power to:

(1) Rule upon motions and requests;

(2) Adjourn the hearing from time to time and change the time and place of hearing;

(3) Receive evidence;

(4) Admit or exclude evidence;

(5) Hear oral arguments on facts or law;

(6) Do all acts and take all measures necessary for the maintainance of order at the hearing for the efficient conduct of the proceeding; and

(7) Make a written determination based upon evidence submitted at the hearing.

(b) The Hearing Officer does not have the authority to compromise claims or to waive provisions of the regulations or the contracts of the Corporation unless the appeal is from a determination made under the good faith reliance on misrepresentation provisions of the crop insurance regulations.

§ 400.98 Initial hearing.

(a) The initial hearing will be conducted by a Hearing Officer at a time and place designated by the Hearing Officer taking into consideration the convenience of the Appellant. The hearing will be informal and conducted in a manner deemed most likely to obtain the facts relevant to the issues. The Hearing Officer shall not be a person who participated in determinations giving rise to the hearing.

(b) The Hearing Officer will restrict the hearing to pertinent matters under consideration and may exclude irrelevant, immaterial or unduly repetitious evidence. The Appellant will be given a full and complete opportunity to present evidence relevant tothe issue through oral or documentary information. Persons other than those appearing on behalf of the Appellant may be permitted to present information. All persons appearing at the hearing to present information may be questioned by the Appellant.

(c) A transcript may be taken if:

(1) the Appellant advises the Hearing Officer at least ten days prior to the hearing, makes arrangements with a certified court reporter or equivalent individual or company for such transcript at Appellant's expense, and agrees that the Corporation may obtain a copy of the transcript at the Corporation's expense, (if the Appellant wants the transcript to be considered a part of the record of the hearing, the Appellant must supply a copy for that purpose unless the Corporation purchases a copy); or

(2) the Hearing Officer feels that the nature of the case is such so as to make a transcript desirable, in which case a copy of the transcript will be made available to Appellant at Appellant's expense.

§ 400.99 Hearing Officer's determination.

(a) After the close of the hearing, the Hearing Officer will promptly prepare a determination containing a clear and concise statement of the Appellant's and the Corporation's contentions and of the material facts as found by the Hearing Officer. The report shall also contain the issues and the Hearing Officer's determination of those issues.

(b) Except as provided in §§ 400.95 and 400.96, the determination must be based upon information or evidence presented at the hearing or otherwise

made known to the Appellant and made a part of the record of the hearing and the Appellant must be given the opportunity to examine and respond to all evidence presented prior to the determination of the Hearing Officer.

(c) The determination of the Hearing Officer shall be mailed to the Appellant by Certified Mail, return receipt requested.

§ 400.100 Appeal hearing.

(a) Except as they may be inconsistent with the provisions of this Section, the provisions of this Subpart applicable to the initial hearing shall be applicable to the appeal hearing.

(b) Appellant may appeal from the determination of the Hearing Officer in an initial hearing within forty five days of the date of the determination, to the Deputy Manager, FCIC, United States Department of Agriculture, Washington, DC 20250. The Hearing Officer designated to hold the hearing shall not be a person who participated in the decisions or determinations from which the Appellant is appealing. The hearing will be scheduled at a time and in Washington, DC, or at such other place as the Corporation may designate taking into consideration the interests of the Appellant.

(c) The hearing will be de novo but the record of the initial hearing will be admitted at the appeal hearing and considered by the Hearing Officer in making a determination. The record at the initial hearing may be supplemented by the Corporation and the Appellant. Evidence which duplicates written evidence or transcribed testimony appearing in the record of the initial hearing will not be admitted by the Hearing Officer absent a showing of good cause. The determination of the Hearing Officer at the initial hearing will not be considered by the Hearing Officer at the Appeal Hearing, however, the Hearing Officer at the Appeal Hearing may adopt relevant portions of the initial Hearing Officer's determination if the appeal Hearing Officer agrees with those portions after independent examination of the record.

§ 400.101 Reservation of authority.

Nothing contained in the regulations in this subpart shall preclude the Manager of the Corporation from determining any question arising under the programs to which the regulations in this Subpart apply or from revising or modifying any determination made by a Hearing Officer.

Done in Washington, DC, on October 2, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3038 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 430

[Docket No. 0060A]

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years in all states, except Arizona and California, where they will be effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add as a cause of loss the unavoidable failure of irrigation water supply; (2) Limit the insured's share of an indemnity on crops transferred before harvest; (3) Clarify processor contract requirements; (4) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (5) Change the method of computing indemnities when acreage, share or practice is underreported; (6) Change the method of crediting the replanting payment; (7) Change the calculation in computing replanting payments; (8) Change the stage guarantees; (9) Shorten the length of time an insured has to give notice when claiming an indemnity (10) Change the cancellation and termination dates in certain counties; (11) Provide a method for calculating production to count on harvested and appraised production; (12) Define at what stage of guarantee a replanting payment will be determined; (13) Add definitions of "ASCS", "Loss ratio", and "Normal Stand", (14) Amend definitions of "County", "Crop year", and "Harvest"; and (15) change the method of determining if a loss occurs when the beets are harvested and delivered to the processor. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 15, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

Merritt W. Sprague, Manager, FCIC (1) has determined that this action is not a major rule as defined by Executive Order 12291 bacause it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; Therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must be on file by February 15, 1986, good cause is shown for making this rule effective in less than 30 days.

Other than minor changes in language and format, the principal changes in the sugar beet policy are:

1. *Section 1.*—Add the failure of irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2. e. (2).

2. *Section 2.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops

transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

Clarify processor contract requirements and when such requirements must be met in order for sugar beet acreage to be insured.

3. *Section 4.*—Eliminate the current second stage guarantee and make the current third stage guarantee the second stage guarantee to provide protection which more closely reflects the investment cost of producing sugar beets after the first stage. Sugar beets which are destroyed in the second stage will now receive a full indemnity.

4. *Section 5.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

5. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payment is made it will be deducted and applied to payment of the billed premium. This is a change from the current practice of applying the replanting payment to the outstanding premium in all cases.

6. *Section 8.*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

7. *Section 9.*—If the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted, allow the guarantee only on the acreage, share or practice reported. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations and reduce the indemnities to those producers underreporting after planting.

Add provisions to provide a method of calculating production to count for harvested and appraised production when claiming an indemnity.

Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment; clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date; and delete the requirement that the payment be considered an indemnity except for minor coverage requirements. This reduces the number of inspections by eliminating small replant payments and paperwork.

Clarify the stage guarantee in determining a replanting payment.

8. Section 15.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

Change cancellation date from July 15 to August 31 in Arizona and Imperial County, California. Add a November 30 termination date for all other California counties. These changes are made to more closely conform to practices in these areas.

9. *Section 17.*—Add definitions of "ASCS", "Loss ratio", and "Normal stand".

Amend the "County" definition to clarify that land identified by an ASCS farm serial number and located outside the county and within the State will be included in the county.

Amend the "Crop year" and "Harvest" definitions.

On Thursday, December 26, 1985, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 50 FR 52782, to revise and reissue the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years in all states, except Arizona and California, for the 1987 and succeeding crop years for Arizona and California. The public was given 30 days in which to submit written comments on the proposed rule, but none were received. Therefore, with the exception of minor changes in language and format, the proposed rule as published at 50 FR 52782 is adopted as a final rule.

List of Subjects in 7 CFR Part 430

Crop insurance, Sugar beets.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years for all states, except Arizona and California, and for the 1987 and succeeding crop years in Arizona and California, to read as follows:

PART 430—SUGAR BEET CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in California and Arizona)

Sec.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in California and Arizona

§ 430.1 Availability of sugar beet crop insurance.

Insurance shall be offered under the provisions of this subpart on sugar beets in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sugar beets which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 430.3 OMB control numbers.

The OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 430.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 430.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sugar beet insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 430.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sugar beet crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 430.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the sugar beet crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sugar beet contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sugar Beet Crop Insurance Policy for the 1986 and succeeding crop years (1987 and succeeding crop years in California and Arizona) are as follows:

Department of Agriculture Federal Crop Insurance Corporation

Sugar Beet Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement To Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms And Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure or breakdown of irrigation equipment or facilities;

(3) The failure to follow recognized good sugar beet irrigation practices;

(4) The failure to follow recognized good sugar beet farming practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be sugar beets grown under a contract with a processor for processing as sugar, which are grown on insured acreage and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be sugar beets planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured sugar beets at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for in the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to sugar beets and such acreage is not replanted;

(4) Initially planted after the final planting date set by the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of sugar beets not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage);

(6) Planted to a type or variety of sugar beets not established as adapted to the area or excluded by the actuarial table;

(7) Planted to sugar beets:

(a) The preceding crop year in Michigan, Minnesota, North Dakota, and Ohio unless the acreage is designated as insurable by the actuarial table; or

(b) The two preceding crop years in all other states unless the acreage is designated as insurable by the actuarial table;

(8) In California, except Imperial county, planted before filing of the application until a normal stand is obtained;

(9) Of volunteer sugar beets; or

(10) Planted with another crop.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good sugar beet irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of sugar beets in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sugar beets planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The second stage production guarantees are in the actuarial table. The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First stage is from planting until July 1 except in California and Arizona where the first stage is from planting until the earlier of thinning or 90 days after planting. The first stage also applies to any acreage damaged in the first stage to the extent that growers in the area generally would not further care for the sugar beets;

(2) Second stage applies to all insured sugar beets after the first stage.

The production guarantee applicable to any acreage within a unit will be that established for the stage reached by the sugar beets on that acreage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year (1885 crop year in California and Arizona) under the terms of the experience table contained in the sugar beet policy in effect for the 1985 crop year (1986 crop year in California and Arizona), you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 (1991 crop year in California and Arizona) crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year (1986 crop year in California and Arizona);

(4) Once your loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches when the sugar beets are planted and ends at the earliest of:

a. Total destruction of the sugar beets;

b. Harvest of the sugar beets on the unit;

c. Final adjustment of a loss; or

d. The following calendar date:

(1) July 15 for Arizona and Imperial County, California;

(2) The last day of the 12th month after the date of planting on the unit in all other California counties, unless a request for extension of the insurance period is received before such date and we approved the request;

(3) November 25 in Ohio; and

(4) November 15 in all other states.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sugar beets damaged due to any insured cause (see subsection 9f);

(b) During the period before havest, the sugar beets on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sugar beets and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested sugar beets (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the sugar beets on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the sugar beets on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destory any of the sugar beets which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sugar beets on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sugar beets on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar beets to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information

reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in tons) to be counted for a unit will include all harvested and appraised production.

(1) Any harvested production of undamaged sugar beets will be determined by:

(a) Dividing the average percentage of sugar in such sugar beets, by the percentage of sugar shown in the actuarial table; and

(b) Multiplying the results (rounded to three places) by the tons of such sugar beets.

The average percentage of sugar will be determined by the processor from individual tests taken at the time of delivery. If individual tests of sugar content are not made at the time of delivery, the factor will be 1.000.

(2) (a) The production to count from acreage damaged due to insurable causes occurring within the insurance period, will be determined by:

(i) Dividing the gross amount received for the damaged sugar beets (including cooperative stock, patronage refunds, dollar values, etc.) by the applicable price per pound of sugar;

(ii) Dividing that result by 2,000; and

(iii) Dividing that result by the factor contained in the actuarial table for that purpose.

(b) The applicable price per pound for sugar will be the local market price on the earlier of:

(i) The day the loss is adjusted; or

(ii) The day the damaged sugar beets are sold.

(c) If the price per pound received for the damaged sugar beets is less than the highest average amount paid by the processor to any producer for sugar beets which were damaged by the cause of loss as claimed by you, you will be considered to have received that average amount per pound in determining the gross amount received.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for acreage not covered by (a) and (b) of this subsection (3) and which does not qualify for the second stage guarantee will be counted except as provided in (d) of this subsection (3); and

(d) The total appraisal for uninsured causes.

(4) There will be no adjustment for quality on any appraisal.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sugar beets becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any harvested or unharvested sugar beets may be determined on the basis of field appraisals or inspections conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the sugar beets are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured sugar beets replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit, (as determined on the final planting date).

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the second stage guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed one ton multiplied by the price election times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sugar beets are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

1. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be made on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sugar beets produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Prior to the cancellation date you must:

(1) Furnish to us satisfactory production records for the crop year or the contract will be cancelled for the next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation date	Termination date
Imperial County, California; and Arizona	Aug. 31	Aug. 31.
All other California counties	July 15	Nov. 30.
All other States	Apr. 15	Apr 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

a. December 31 preceding the cancellation date for counties with an April 15 cancellation date;

b. April 30 preceding the cancellation date for all other counties. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sugar beet crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sugar beet insurance in the county.

b. "ASCS means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) any land identified by the same ASCS farm serial number for the county but physically located in another county within the State.

d. "Crop year" means the period within which the sugar beets are normally grown and designated by the calendar year in which the sugar beets are normally harvested; however, in California and Arizona, it will be the period from planting until the applicable date for the end of the insurance period and is designated by:

(1) The calendar year in which planted if planted on or before July 15; or

(2) The next calendar year if planted after July 15.

e. "Harvest" means the completion of topping and lifting of sugar beets on any acreage for delivery to a processor.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means your ratio of indemnity to premium.

i. "Normal stand" means the number of live plants after thinning required to produce an average yield per acre for the area.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

k. "Replanting" means performing the cultural practices necessary to replant insured acreage to sugar beets.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the sugar beets or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of sugar beets in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugar beets on such land will be considered as owned by the lessee. Land which would otherwise be on unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on January 28, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3039 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Parts 434 and 436

[Amdt. No. 1; Docket No. 0061A]

Tobacco (Guaranteed Production Plan) Crop Insurance Regulations and Tobacco (Dollar Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule and termination.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1986 and succeeding crop years, by expanding the provisions of these regulations to incorporate insurance procedures for tobacco types 11, 12, 13, and 14, formerly insured under the Tobacco (Dollar Plan) Crop Insurance Regulations 7 CFR Part 434, and terminates the Dollar Plan effective for the 1986 crop year. The intended effect of this rule is to: (1) Broaden the provisions of the Guaranteed Plan regulations by combining the procedures for insuring tobacco under the

Guaranteed Plan and Dollar Plan and terminate the Dollar Guaranteed Plan of insurance; (2) add end of insurance period dates by tobacco type; (3) shorten the length of time an insured has to give notice when claiming an indemnity; (4) add the requirement that stalks of certain tobacco types not be destroyed without consent; (5) change the cancellation and termination dates for some states and counties; and (6) redefine "Market price" to clarify its meaning. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 15, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action consitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must be on file by February 15, 1986, good cause is shown for making this rule effective in less than 30 days.

The current regulations for insuring tobacco under the guaranteed dollar plan are contained in 7 CFR Part 434. FCIC has determined to convert to Actual Production History (APH) on all crops except those under GYC–GYC/IYC plans. Under the Actual Production History (APH) program, the regulations for insuring tobacco under the dollar plan are only slightly different from those for insuring tobacco under the guaranteed production plan of insurance found in 7 CFR Part 436. The conversion to APH means that the dollar plan will no longer apply, since this insurance is offered on a dollar guarantee rather than a production guarantee. Therefore, FCIC determined that both policies for insuring tobacco be combined into one, differentiating the separate types of tobacco where necessary, effective for the 1986 and succeeding crop years.

In order to more effectively administer the tobacco crop insurance program with regard to these two plans of insurance, FCIC has incorporated those provisions applying to types 11, 12, 13, and 14 tobacco into the policy provisions contained herein through the following changes:

1. Section 7. Add end of the insurance period dates by tobacco type.

2. Section 8. Specify 5 days for inspection of tobacco not sold through auction warehouses prior to its sale or other disposition if an indemnity is to be claimed.

Add a clause requiring insureds to leave tobacco stalks standing for field inspection on any unit of tobacco of types 11, 12, 13, or 14 on which an indemnity is to be claimed after harvest is completed.

Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

3. Section 9. Add a clause to enable FCIC to determine the fair market value of tobacco not sold through auction warehouses, by inspecting such tobacco before it is sold, contracted to be sold, or otherwise disposed of.

Add a provision to appraise acreage of tobacco types 11, 12, 13, or 14, at not less than the guarantee, if stalks are destroyed prior to our written consent.

4. Section 15. Add March 31 cancellation and termination dates for some states and counties.

5. Section 17. Amend the "Market price" definition to specify location.

On December 26, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 52788, to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1986 and succeeding crop years by combining the provisions for tobacco types 11, 12, 13, and 14 of the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434) and to terminate the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), effective with the end of the 1985 crop year. The public was given 30 days in which to submit written comments on the proposed rule, but none were received. Therefore, with the exception of minor changes in language and format, the proposed rule as published at 50 FR 52788 is adopted as a final rule.

List of Subjects in 7 CFR Parts 434 and 436

Crop insurance; Tobacco (Dollar Plan and Guaranteed Production Plan).

Final Rule

PART 434—[AMENDED]

a. Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby amends the subpart heading to the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), effective through the 1985 crop year, as follows:

1. The authority citation for 7 CFR Part 434 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The subpart heading in 7 CFR Part 434 is revised to read as follows:

Subpart—Regulations for the 1985 Crop Year

Final Rule

6. Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby amends the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1986 and succeeding crop years, in the following instances:

PART 436—[AMENDED]

1. The authority citation for 7 CFR Part 436 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 436.7(d) is revised to read as follows:

§ 436.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR § 400.37, § 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Guaranteed Production Plan) Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Tobacco Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good tobacco farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow recognized good tobacco irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, share insured.

a. The crop insured will be tobacco of the type shown as insurable in the actuarial table, which is grown on insured acreage, and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;

(4) Initially planted after the final planting date set by the actuarial table unless you agree, in writing, on our form to coverage reduction;

(5) Planted to tobacco of a discount variety under the provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table;

(7) Designated as uninsurable by the actuarial table; or

(8) Tobacco planted for experimental purposes.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good tobacco irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantee will be reduced by 35 percent for any unharvested acreage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. The following dates immediately after the normal harvest period:

(1) Types 11 and 12..... November 30;
(2) Type 13..... October 31;
(3) Type 14.....September 30;
(4) Type 36.....January 31;
(5) Types 31 and 35.....February 28;
(6) Types 21, 22, 23, 37, 54, and 55....March 31;
(7) All other types.....April 30.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) For any unit of tobacco other than types 11, 12, 13, or 14, if probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any insured tobacco is destroyed or damaged by fire during the insurance period.

(5) If tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given to allow us 5 days to inspect the cured tobacco prior to its sale or other disposition.

(6) For any unit of tobacco of types 11, 12, 13, or 14 on which an indemnity is to be claimed and the tobacco stalks are to be destroyed, notice of loss must be given to us upon completion of harvest. The tobacco stalks must not be destroyed until we give consent.

(7) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco is completed on the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the value per pound by the market price per pound; and

(b) Multiplying the product by the number of pounds of such tobacco.

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity:

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of, and

(b) At our option to obtain additional offers on your behalf.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or put to another use without prior written consent; and

(c) Only the appraisal in excess of 35 percent of the production guarantee for all other unharvested acreage.

(4) We may make an appraisal of not less than the guarantee per acre for any acreage of tobacco types 11, 12, 13, or 14 on which the stalks have been destroyed prior to our consent.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and appraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the and of the normal harvest period.

(7) If you elect to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount.

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any rights, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assigment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us,

you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tobacco produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such record may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be cancelled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless cancelled or terminated as provided in this section.

b. This contract may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Prior to the cancellation date you must:

(1) Furnish to us, satisfactory production records for the crop year or the contract will be cancelled for the next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; Surry, Wilkes, Caldwell, Burke, and Cleveland Counties, North Carolina and all North Carolina counties east thereof; and South Carolina.	Mar. 31.
All other North Carolina counties and all other States.	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of guaranteed tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by the same ASCS farm serial number for the county even though physically located in another county within the state.

d. "Crop year" means the period within which the tobacco is normally grown and is designated by the calendar year in which the tobacco is normally harvested.

e. "Harvest" means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio indemnity to premium.

i. "Market price" means the average price determined by us for the applicable type of tobacco. Such price will be the:

(1) Average price in the belt or area for the preceding crop year for any unit which is not to be harvested; or

(2) The average price in the belt or area for the week the loss is adjusted for any unit or part thereof which is harvested.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

k. "Planting" means transplanting the tobacco plant from the bed to the field.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify and ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C. on January 28, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3040 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-08-M

Commodity Credit Corporation

7 CFR Part 1472

Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1982-1985)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt, as a final rule, an interim rule which was published in the **Federal Register** on August 23, 1985 (50 FR 34079). The interim rule amended the regulations at 7 CFR Part 1472 which set forth the requirements governing the Commodity Credit Corporation's (CCC) price support program for shorn and unshorn lambs (pulled wool). The interim rule amended the program with respect to: (1) Marketing of shorn wool eligible for price support payments; (2) definitions which are applicable to the program; (3) producers eligibility for price support payments; (4) contents of sales documents which are submitted in support of price support payment applications; and (5) the deletion of certain obsolete references. The interim rule is hereby adopted as a final rule without change.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Divisions, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Telephone (202) 447–5621.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1472) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560–0023 has been assigned.

This final rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this final rule applies are : Title—Commodity Loans and Purchases; § 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Interim Rule

An interim rule amending the Commodity Credit Corporation's (CCC) price support program for shorn wool and unshorn lambs (pulled wool) was published in the **Federal Register** on August 23, 1985 (50 FR 34079). The interim rule provided for a 60-day comment period.

The interim rule made several amendments with respect to the terms and conditions of the 1985 price support program for shorn wool and unshorn lambs (pulled wool). Most of the changes which were included in the interim rule were the result of a review conducted by the Office of the Deputy Administrator, State and County Operations (DASCO) of the Agricultural Stabilization and Conservation Service (ASCS) of a select number of 1983 shorn wool applications for payment and supporting documentation which revealed marketing practices which defeat the purposes of the program. The remaining changes involved the deletion of certain obsolete references.

The interim rule amended the regulations at 7 CFR Part 1472 by: (1) Adding the definitions of "shorn wool" and "family member" and amending the definition of "sale document"; (2) providing that the price support payment rate of shorn wool shall be determined and announced by the Executive Vice President , CCC or his designee, at the end of each specified marketing year; (3) clarifying that shorn wool which has been processed in any manner into a wool product, as determined by DASCO, shall not be eligible for price support payments; (4) providing that the sale of wool by a producer to a family member or to a business in which the producer has more than a 20 percent interest are not considered bona fide marketings; and (5) providing that any sales documents which are prepared by the purchaser of wool must have the original signature of the purchaser or authorized representative.

The Department received one comment with respect to the interim rule from a farm bureau federation which is on file and available for public inspection in Room 4091, South Building, 14th and Independence Avenue, SW., Washington, D.C. 20013. The comment supported the provisions of the interim rule as published and recommended that they be adopted. After reviewing the comments received and the provisions of the interim rule, it has been determined that the interim rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1472

Price support programs, Wool.

Final Rule

PART 1472—[AMENDED]

Accordingly, the interim rule published at 50 FR 34079, which amended 7 CFR 1472, is hereby adopted as a final rule without change.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714b, 714c); secs. 702–708, 68 stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, D.C. on February 6, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–3103 Filed 2–11–86; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–ASW–38, Amdt. 39–5226]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm Gmbh (MBB), Model BO–105 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain MBB Model BO–105 series helicopters, through serial number (S/N) 750. This AD requires a daily check for binding of the main rotor controls. In addition, within 10 hours' time in service, the System II tandem hydraulic

actuator shall be cleaned and sealed. The AD is needed to prevent jamming of the main rotor controls due to freezing moisture in a valve cavity.

EFFECTIVE DATE: February 25, 1986, to all persons except those persons to whom it was made immediately effective by priority letter AD 85–26–02 issued December 23, 1985.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 25, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: A copy of the alert service bulletin is contained in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106. The applicable service information may be obtained from MBB Helicopter Corp., P.O. Box 2349, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: J.H. Major, Helicopter Policy and Procedures Staff, ASW–111, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877–2549.

SUPPLEMENTARY INFORMATION: On December 23, 1985, priority letter AD 85–26–02 was issued and made effective immediately as to all known U.S. owners and operators of certain MBB Model BO–105 series helicopters certificated in any category. This AD is necessary to detect or prevent possible jamming of a main rotor control System II tandem hydraulic control actuator as a result of accumulated water freezing in a servo (spool) valve cavity of certain MBB BO–105 series helicopters as specified in MBB Alert Service Bulletin (ASB) No. 26 dated December 12, 1985. A daily operational check for control system binding shall be accomplished until the System II actuators are cleaned and sealed as prescribed to prevent possible accumulation and freezing of water in the actuator's cavity. The actuators must be cleaned and sealed within the next 10 hours' time in service or before next flight if control binding is detected. A possible jam in a System II actuator may prevent adequate control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued December 23, 1985, to all known U.S. owners and operators of certain MBB Model BO–105 series helicopters, through S/N 750. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Messerschmitt-Bolkow-Blohm: Applies to Bo–105 series helicopters, through S/N 750, certificated in any category that are equipped with one of the following tandem hydraulic units: Part Numbers (P/N) 105–45021, 105–45023, 105–45028, 105–83001, D133–3073, and DSK1–30142.

Compliance is required as indicated, unless previously accomplished.

To detect or prevent possible jamming of the helicopter main rotor control system, accomplish the following:

(a) Before the first flight of each day after the effective date of this AD, operate the System II hydraulic actuators to detect binding of the control. If binding is detected, clean and seal the System II hydraulic actuators in accordance with paragraph (b) of this AD.

(b) Within the next 10 hours' time in service after the effective date of this AD, clean and seal System II hydraulic actuators in accordance with MBB BO–105, ASB No. 26, Part 2B, dated December 12, 1985, or with an equivalent approved in accordance with paragraph (d) of this AD. After sealing, the operational check in paragraph (a) is no longer required.

(c) The operational check in paragraph (a) may be performed by the pilot.

Note.—For the requirements regarding recording compliance and method of compliance with this AD in the aircraft's permanent maintenance records, see FAR § 91.173.

(d) Upon request, an equivalent means of compliance with this AD may be used when approved by the Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667–1011.

(e) The aircraft may be flown in accordance with FAR §§ 21.197 and 21.199 to a base where the actuators may be sealed in accordance with paragraph (b) of this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to MBB Helicopter Corp., P.O. Box 2349, West Chester, Pennsylvania 19380. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective February 25, 1986 as to all persons except those persons to whom it was made immediately effective by priority letter AD 85–26–02, issued December 23, 1985, which contained this amendment.

Issued in Fort Worth, Texas, on January 22, 1986.

F.E. Whitefield,

Acting Director, Southwest Region.

[FR Doc. 86–2995 Filed 2–11–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85-ASO-26]

Designation of Transition Area; Greensboro, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Greensboro, Alabama, transition area to accommodate Instrument Flight Rules (IFR) operations at Greensboro Municipal Airport. This action lowers the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Cedarville Nondirectional Radio Beacon (NDB), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 9, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Greensboro, Alabama, transition area. This action provides controlled airspace for aircraft executing a new instrument approach procedure to Greensboro Municipal Airport (50 FR 50173). The operating status of the airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Greensboro, Alabama, transition area and lowers the base of controlled airspace in the vicinity of Greensboro Municipal Airport from 1,200 to 700 feet above the surface.

The FAA had determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition Area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

Greensboro, AL—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Greensboro Municipal Airport (Lat. 32°40'54" N., Long. 87°39'43" W.).

Issued in East Point, Georgia, on February 3, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-2998 Filed 2-11-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 13

[Docket No. 51178-5178]

Intergovernmental Review of Agency Programs and Activities; Proposal To Amend Department of Commerce Program Coverage Under Executive Order 12372

AGENCY: Department of Commerce.

ACTION: Proposal to amend program coverage under E.O. 12372.

SUMMARY: The purpose of this notice is to inform state and local governments and other interested persons of the Department of Commerce's reexamination of seven programs previously excluded from coverage under Executive Order 12372, "Intergovernmental Review of Federal Programs." The following five programs, previously excluded from the Executive Order, will now be covered:

11.303 Economic Development Technical Assistance
11.405 Anadromous & Great Lakes Fisheries Conservation
11.417 Sea Grant Support
11.426 Financial Assistance for Marine Pollution Research
11.427 Fisheries Development & Utilization Research and Development Grants & Cooperative Agreements Program

This notice also sets forth justification to continue exclusion of two other programs on the basis that the programs do not directly affect state and local governments. A full understanding of the requirements of the Order may be gained by referring to the regulations published in 15 CFR Part 13 (48 FR 29126 dated June 24, 1983) and the Notice of Commerce programs subject to the order (48 FR 29138 dated June 24, 1983).

DATE: Comments must be received on or before March 31, 1986. Following the end of the comment period, the Department will review all comments received and make a decision on whether to exclude or include the TAA (11.109) and MBDA's Management & Technical Assistance Program (11.800). A notice will be published in the **Federal Register** announcing the determination.

ADDRESS: Interested persons should submit comments to Mary Ann T. Knauss, Deputy Assistant Secretary, Office of Intergovernmental Affairs, Room 5412, U.S. Department of Commerce, Washington, DC 20230. Comments will be available for inspection at the above address from 9:00 am to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Ann T. Knauss, Deputy Assistant Secretary, Office of Intergovernmental Affairs, Room 5412, U.S. Department of Commerce, Washington, DC 20230. Telephone (202) 377-3281.

SUPPLEMENTARY INFORMATION: The programs listed below by catalog of Federal Domestic Assistance Numbers are proposed for exclusion from the scope of Executive Order 12372 for the reasons stated. This notice is exempt from the requirements of 5 U.S.C. 533 because it is a matter relating to loans, grants, benefits, or contracts.

11.109 Trade Adjustment Assistance (TAA)

The TAA program has no direct effect on state and local governments. This program is national in scope and helps trade-injured firms and industries develop and implement strategies to improve their ability to compete with foreign producers. Following is a description of how the program operates:

Firm Technical Assistance. Firms that satisfy the certification criteria, as specified in the Trade Act of 1974, may apply for and receive technical assistance to develop and implement an adjustment strategy. These technical assistance services are provided primarily through a network of Trade Adjustment Assistance Centers (TAACs) which are funded by the International Trade Administration (ITA) through cooperative agreements. Each TAAC covers a specified geographic area (most of which are multistate), employs professional staff with expertise in various business disciplines, and has funds to engage private management consultants. The first step in the technical assistance process is for the certified firm to receive help from a TAAC in diagnosing its problems and assessing its opportunities; and in development of an adjustment proposal. If the adjustment proposal is accepted by ITA, the firm can apply ITA and receive assistance in implementing the strategy. Most implementation assistance is provided through a TAAC contract with a management consultant. All firms are required to bear a minimum of 25% of the cost of the technical assistance.

Firm financial assistance. Certified firms with accepted adjustment proposals may also apply to the Office of Trade Adjustment Assistance (ITA) for a Trade Act loan or loan guarantee.

Industry technical assistance. The TAA program also helps industry associations or other organizations representing industries hurt by foreign trade to develop and implement industrial recovery strategies. The industry must be able to demonstrate injury from foreign trade, and a minimum of 25% cash cost-sharing is normally required. Assisted industry associations primarily represent a national industry with firms in many states.

11.800 Minority Business Development Management & Technical Assistance

The Minority Business Development Administration's (MBDA) State and Local Government (S&LG) program is designed to develop and strengthen public sector organizations engaged in minority business development. This particular funded effort does impact S&LGs and will continue to be covered under Executive Order 12372.

MBDA's other technical assistance programs, which encompass all funding efforts with the exception of its S&LG program, do not directly affect state and local governments.

Recipients of technical assistance funds provide clients with advice and counseling in such areas as preparing financial packages, business counseling, business information and management, accounting guidance, marketing, business/industrial site analysis, production, engineering, construction assistance, procurement, identification of potential business opportunities, and identification of capital sources. These services are reactive in nature and are designed to address the needs of the particular minority-owned firms receiving assistance.

These technical assistance programs have no direct effect on state or local governments or their budgetary processes by virtue of the fact that the programs are geared toward providing services to private sector firms or trade associations.

Dated: January 31, 1986.

Douglas A. Riggs,

General Counsel.

[FR Doc. 86-3068 Filed 2-11-86; 8:45 am]

BILLING CODE 3510-GA-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc., providing for safe and effective use of lasalocid premixes in producing free-choice supplemental feeds for cattle on pasture for increased rate of weight gain.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, is sponsor of approved NADA 96-298 which currently provides for the use of lasalocid in cattle fed in confinement for slaughter for improved feed efficiency and increased rate of weight gain, and in pasture cattle for increased rate of weight gain. The firm has filed a supplement to the NADA providing for use of the same premixes (15-, 20-, 33.1-, and 50-percent lasalocid sodium activity per pound) in making supplemental feeds which are to be fed free-choice to pasture cattle for increased rate of weight gain. The supplemental NADA is approved and the regulations are amended accordingly. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) (April 26, 1985; 50 FR 16636) that this action of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.311 is amended in paragraph (b)(3) by removing "(7) and (9)" and replacing it with "(7), (9), and (11);" and by adding new paragraph (f)(11) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(f) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
.	.	.	.	.
(11)		Cattle; for increased rate of weight gain.	For pasture (slaughter, stocker, and feeder cattle) only; feed continuously on a free-choice basis at a rate of not less than 60 mg nor more than 200 mg of lasalocid per head per day.	000004

Dated: February 4, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-3005 Filed 2-11-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8074]

Income Taxes; Stock Acquisitions and Target Corporation Assets; Section 338 International Aspects

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to international aspects of section 338 of the Internal Revenue Code of 1954 ("Code"), as added by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") and as amended by the Technical Corrections Act of 1982 ("TCA") and the Tax Reform Act of 1984 ("TRA"). The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

DATE: These regulations are effective February 12, 1986. These temporary regulations generally apply to stock acquisitions made after August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document adds new temporary regulations § 1.338-5T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR") and amends temporary regulations §§ 1.338-1T, 1.338-4T, and 1.338(h)(10)-1T. This document also amends the table of OMB control numbers in Part 602 of Title 26 of the CFR to reflect the OMB control number assigned to § 1.338-5T.

Section 1.338-1T was published as T.D. 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722), and was amended and redesignated (as § 1.388-1T) by temporary regulations published as T.D. 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086). Section 1.338-1T also was amended by temporary regulations published as T.D. 8021 in the **Federal Register** on April 25, 1985 (50 FR 16402). The temporary regulations published on April 25, 1985, also added § 1.338-4T. Sections 1.388-1T and 1.338-4T were amended by temporary regulations published as T.D. 8068 in the **Federal Register** on January 8, 1986, and by temporary regulations published as T.D. 8072 in the **Federal Register** on January 29, 1986. The temporary regulations published on January 8, 1986, also added § 1.338(h)(10)-1T.

New § 1.388-5T provides guidance on international aspects of section 338 of the Code, as added by section 224 of TEFRA (Pub. L. No. 97-248; 96 Stat. 485) and as amended by section 306(a)(8) of the TCA (Pub. L. No. 98-448; 96 Stat. 2402) and section 712(k) of the TRA (Pub. L. No. 98-369; 98 Stat. 946). The temporary regulations added and amended by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

General Operation of Section 338

Effect of Election Under Section 338

Under section 338, a corporation ("purchasing corporation" or "P") that acquires the stock of another corporation ("target") in a qualified stock purchase (as defined in section 338(d)(3)) may elect (or may be deemed to elect under the consistency rules of section 338) to have the target treated as if it (1) sold all of its assets (as "old target") at fair market value at the close of the day on which the qualified stock purchase occurred ("acquisition date") and (2) purchased those assets as a new corporation ("new target") at the beginning of the following day for an amount generally equal to the price paid by P for target stock plus the liabilities of target and other relevant items. Section 338 (a) and (b). The deemed sale of assets by old target generally is governed by the nonrecognition rule of section 337. The application of section 337 is limited by section 338(c)(1), however, if the maximum percentage (by value) of target stock held by P during a one-year period beginning on the acquisition date is less than 100 percent. In general, the tax attributes of old target, including old target's earning and profits, are not available to new target. The net effect of a section 338 election is that P obtains a basis in target assets that generally reflects the price it paid for target stock.

Effect of Consistency Rules

Section 338 contains rules designed to ensure consistent treatment between stock and asset acquisitions. Consistency issues may involve a target or its target affiliate. A corporation is a "target affiliate" of a target if each of those corporations was a member of the same affiliated group at any time during so much of target's consistency period as ends on its acquisition date. Section 338(h)(6)(A). Section 338(h)(6)(B)(i), however, excludes foreign and certain domestic corporations from the status of target affiliates, except as otherwise provided in regulations (and subject to any conditions specified therein). Section 338 contains two sets of consistency rules: The asset consistency rule of section 338(e) and the stock consistency rules of section 338(f).

If a section 338 election is not made, then, under the asset consistency rule of section 338(e) (as implemented by § 1.338-4T(f)), a member of the affiliated group that includes P ("P group") generally is required, pursuant to a protective carryover election actually filed by the P group or pursuant to an affirmative action carryover election deemed made by the P group, to take a carryover basis in an asset acquired from target or its target affiliate during target's consistency period if the asset is acquired in a tainted asset acquisition (as defined in § 1.338-4T(f)(6)(i)(A)). For description of consistency period, see section 338(h)(4) and § 1.33-4T(g)(1). If a carryover basis is required pursuant to an affirmative action carryover election, however, the District Director is empowered, upon audit, to cause a deemed election for target under section 338(e)(1) (in lieu of a carryover basis in the asset acquired from target or its target affiliate) if a deemed election is appropriate to carry out the purposes of the consistency rules of section 338 (e), (f), or (i). See § 1.338-4T(f)(1)(ii). The

asset consistency rule reflects the view that the P group should not be permitted to obtain, from another affiliated group within the consistency period, both the stock of a corporation (with its historic inside asset basis and other tax attributes intact) and selected assets at a cost basis.

Under the stock consistency rule of section 338(f)(1), a section 338 election for the first-acquired target ("original target") automatically applies to any target affiliate acquired by the P group in a qualified stock purchase during the consistency period. Under the stock consistency rule of section 338(f)(2), P's failure to make a section 338 election for the original target bars a section 338 election for any target affiliate acquired during the consistency period. The stock consistency rules reflect the view that the P group should not be permitted to selectively step-up the inside asset basis and eliminate the tax attributes of some but not all targets acquired during the consistency period from the same affiliated group.

Status of Corporations Described in Section 338(h)(6)(B)(i) As Target Affiliates

Introduction

The general rule prescribed in this document is that a corporation is not excluded from the status of a target affiliate by reason of section 338(h)(6)(B)(i) (relating to exclusion of foreign and certain domestic corporations from target affiliate status). There are exceptions. For purposes of the stock consistency rule of section 338(f)(1), the temporary regulations contain both a "transitional exclusion election" and a prospective "regular exclusion election" pursuant to which certain corporations described in section 338(h)(6)(B)(i) may be excluded from target affiliate status. For purposes of the asset consistency rule of section 338(e)(1), the temporary regulations contain a transition rule that, in effect, automatically excludes certain corporations described in section 338(h)(6)(B)(i) from target affiliate status. (No prospective exclusion rule is provided for asset consistency purposes.)

The notice of proposed rulemaking published in conjunction with this document proposes that the regular exclusion election be eliminated in the final regulations. Under the proposal, the regular exclusion election generally would be available only if the acquisition date of the original target occurred on or before the date of publication of the final regulations. The preamble to the notice contains a discussion of this matter.

Regular Exclusion Election

In General

If the original target for which an election under section 338(g) ("express election") is made is a domestic corporation, then § 1.338–5T(c)(2), as added by this document, permits P in certain cases to make a "regular exclusion election" under which all excludible foreign target affiliates are excluded from the status of target affiliates for purposes of section 338(f)(1). As a consequence, the excludable foreign target affiliates are not subject to deemed elections under section 338(f)(1) by reason of the express election. A foreign corporation is an excludable foreign target if (1) absent section 338(h)(6)(B), it would be subject to a deemed election under section 338(f)(1) by reason of the express election for the domestic original target and (2) its acquisition date occurs after March 15, 1986 (and does not occur pursuant to a binding contract in effect on February 19, 1986.

Under a transitional exclusion election described below, foreign corporations acquired on or before March 15, 1986 (or after that date but pursuant to a binding contract in effect on February 19, 1986 may be excluded from the status of target affiliates for purposes of section 338(f)(1). Unlike the regular exclusion election, the transitional exclusion also applies to domestic corporations described in section 338(h)(6)(B)(i) that are acquired during the prescribed period.

The regular exclusion election may be illustrated as follows. Assume that on June 1, 1986, P makes a qualified stock purchase of domestic target ("DT") and that DT directly holds all of the stock of controlled foreign corporations CFCT1, CFCT2, and CFCT3. The June 1, 1986, acquisition does not occur pursuant to a binding contract in effect on February 19, 1986. Each of the CFCs is an excludible foreign target affiliate. All of those excludible foreign target affiliates will be excluded from the status of a target affiliate for purposes of section 338(f)(1) if P makes a regular exclusion election in connection with an express election filed for DT. If the regular exclusion election is made, then the express election for DT will not cause deemed elections under section 338(f)(1) for CFCT1, CFCT2, and CFCT3. Because the normative rule under these temporary regulations is that corporations are not excluded from target affiliate status by reason of section 338(h)(6)(B)(i), each of the CFCs will be subject to a deemed election under section 338(f)(1) by reason of new DT's deemed purchase of their stock if a regular exclusion election is not made in connection with the express election for DT. See section 338 (a)(2) and (h)(3)(B).

An elective exclusion from target affiliate status for purposes of section 338(f)(1) is permitted because of the asserted hardship to taxpayers of imposing full stock consistency with respect to foreign corporations. It is recognized that the elective exclusion permits some selectivity and is complex. However, the potential for selectivity is limited since all of the excludible foreign target affiliates automatically are subject to the regular exclusion election.

Special Stock Basis Rules

New DT's basis in the stock of an excludible foreign target affiliate that is subject to a regular exclusion election is determined under a special basis rule if (1) old DT recognizes a section 1248(f) dividend as a result of its deemed sale of that stock (or would have recognized such a dividend if the excludible foreign target affiliate had earnings and profits), (2) the section 1248(f) dividend actually recognized (if any) is less than the gain realized by DT on its deemed sale of that stock, and (3) any earnings and profits that would have arisen had the regular exclusion election not been made would have increased that section 1248(f) dividend. Under the special basis rule, new DT's basis in that stock is the lesser of two amounts. The first amount is the basis allocable to that stock under the normal basis allocation rules of section 338(b). The second amount is old DT's basis in that stock, increased by the section 1248(f) dividend (if any) recognized by old DT with respect to its deemed sale of that stock. Section 1.338–5T(c)(3). The special basis rule also applies to stock in an excludible foreign target affiliate that is held by any other domestic target that is subject to a deemed election under section 338(f)(1).

Under a rule discussed below, a foreign target that derives a substantial portion of its income from the conduct of a trade or business in the United States may be treated as a domestic target ("FDT") for purposes of the regular exclusion election. An FDT cannot qualify as an excludible foreign target affiliate. Under certain circumstances, however, the special basis rule of § 1.338–5T(c)(3) will apply to an actual domestic target that holds stock in an FDT as if that FDT were an excludible foreign target affiliate subject to a regular exclusion election. Section 1.338–5T(c)(3)(iv). Assume, for example, that DT is deemed under section

338(a)(1) to sell all of the stock of FDT. As a result, FDT is subject to a deemed election under section 338(f)(1). If, on its acquisition date, FDT directly (or indirectly through another FDT) holds stock in an excludible foreign target affiliate that is subject to a regular exclusion election, then new DT's basis in FDT stock is determined as if FDT were an excludible foreign target affiliate. A similar basis rule applies to the excludible foreign target affilitate stock held by new FDT.

The purpose of the special basis rule of § 1.338–5T(c)(3) is to preserve potential section 1248 dividend consequences with respect to the earnings and profits of the excludible foreign target affiliate that would have been triggered had it been subject to a section 338 election, *i.e.*, the earnings and profits that would have resulted from its deemed sale of assets under section 338(a)(1) ("deemed sale earnings and profits"). As explained more fully below in the discussion of section 1248, the earnings and profits of a controlled foreign corporation that is subject to a section 338 election generally are increased, for purposes of determining the amount of the section 1248 dividend to the transferor, by that controlled foreign corporation's deemed sale earnings and profits.

Assume, for example, that DT holds all of the stock of controlled foreign corporation CFCT1 and that P makes a regular exclusion election (applicable to CFCT1) in connection with an express election for DT. As a result of its deemed sale under section 338(a)(1) of the stock of CFCT1, DT will recognize a section 1248(f) dividend equal to the lesser of the gain realized in the deemed sale of CFCT1 stock or the earnings and profits of CFCT1 that are attributable to that stock under the rules of section 1248. By reason of the regular exclusion election, however, CFCT1's deemed sale earnings and profits will not be triggered since CFCT1 will not be subject to a deemed election under section 338(f)(1). Thus, DT's section 1248(f) dividend with respect to the CFCT1 stock will reflect only the earnings and profits that result from the normal operations of CFCT1.

In addition, absent the special basis rule, new DT's basis in the stock of CFCT1 would approximate, in the typical case, the current fair market value of that stock, so that the gain recognition limitation of section 1248 likely would prevent a section 1248 dividend in the event of new DT's prompt sale of that stock in a transaction with respect to which the purchaser made an election under section 338. Assume, for example, that an unrelated corporation purchases the stock of CFCT1 from DT shortly after DT's acquisition date and makes a section 338 election for CFCT1. CFCT1 presumably will have deemed sale earnings and profits as a result of the section 338 election but, by reason of the gain recognition limitation (and in the absence of the special basis rule), a section 1248 dividend likely will not accrue to DT. Thus, the special basis rule is intended to preserve the possibility of a section 1248 dividend on CFCT1's deemed sale earnings and profits in the event of a post-acquisition date sale of CFCT1 stock by DT.

Carryover Basis in Certain Assets

A carryover basis may be imposed with respect to certain asset acquisitions when a regular exclusion election is made. This rule is discussed below in the section on asset consistency rules.

Invalidation Events

A regular exclusion election is not available, or may be invalidated retroactively, if an invalidation event occurs. Each of the two invalidation events provided for in §1.338–5T (c)(2)(iii) involves a factual situation in which a deemed election under section 338(f)(1) for one or more of the excludible foreign target affilitates is considered desirable. In such cases, the "all or nothing" policy underlying the regular exclusion election dictates that *none* of the excludible foreign target affiliates be excluded from the status of a target affiliate pursuant to a regular exclusion election. An invalidation event will be disregarded if, upon the examination of a relevant return, the District Director makes certain determinations described in § 1.338–5T(c)(2)(iii)(A). Unless and until those determinations are made, however, the invalidation event is given full effect.

The first invalidation event is a direct acquisition of the stock of an excludible foreign target affiliate by a P group member, provided that the excludible foreign target affiliate was a controlled foreign corporation at any time during so much of the taxable year within which its acquisition date occurs as ends on that acquisition date. (This rule also applies to the direct acquisition of stock in a domestic target described in section 1248(e) if that target holds stock in such an excludible foreign target affiliate.) Assume, for example, that P makes a qualified stock purchase of all of the stock of DT form S. Assume in addition that, during DT's consistency period, P makes a qualified stock purchase of all of the stock of FT, a target affiliate of DT, from S. All of these corporations but FT are domestic corporations. Thus, FT was a controlled foreign corporation during the relevant period. Accordingly, FT cannot be excluded from the status of a target affiliate pursuant to a regular exclusion election because, by reason of P's direct acquisition of the FT stock, a regular exclusion election cannot be made. Thus, FT will be subject to a deemed election under section 338(f)(1) if an express election is made for DT. As a result, the section 1248 dividend recognized by S will reflect FT's deemed sale earnings and profits. If FT were a subsidiary of DT, however, a regular exclusion election could be made so that FT would not be subject to a deemed election under section 338(f)(1). A potential section 1248 dividend reflecting the earnings and profits inherent in FT's asset (*i.e.*, the earnings and profits that would be triggered as deemed sale earnings and profits if FT were subject to a section 338 election) would be preserved, however, by reason of the special stock basis adjustment rule described above.

The purpose of the first invalidation event is to ensure that the section 1248 dividend (if any) recognized by S at the time it disposes of the FT stock reflects the deemed sale earnings and profits inherent in FT's assets. While it is considered appropriate to, in effect, transfer section 1248 dividend consequences associated with deemed sale earnings and profits from old DT to new DT by reason of the stock basis adjustment rule, it is not considered appropriate to transfer such a potential section 1248 dividend from S to P when S is a United States person that satisfies the stock ownership requirements of section 1248(a) with respect to FT. Nor is it practical to defer S's tax with respect to deemed sale earnings and profits until some event occurring after S disposes of the FT stock. The policy considerations underlying these determinations are examined in detail below in connection with the discussion of the "background" pertaining to the operation of section 1248 in the section 338 context.

The second invalidation event occurs if one or more excludible foreign target affiliates holds stock in a domestic corporation and that domestic corporation would be subject to a section 338 election only if the regular exclusion election did not apply. This rule ensures that all domestic targets are subject to the express election made for the domestic original target. Absent this rule, there would be an incentive, in a case in which section 338 treatment was desired for some but not all the domestic corporations to be acquired, to attempt

to shield one or more of those domestic corporations from section 338 treatment by causing a pre-acquisition date transfer of its stock to an excludible foreign target affiliate subject to a regular exclusion election. Since that excludible foreign target affiliate would not be deemed to purchase the stock of the domestic corporation under section 338 (a)(2) and (h)(3)(B), section 338 treatment for that domestic corporation would be avoided. Section 367(a) would have discouraged such arrangements only in certain circumstances.

Notwithstanding the occurrence of an invalidation event after the regular exclusion election is filed, an excludible foreign target affiliate will not be made retroactively subject to a deemed election under section 338(f)(1) by reason of the section 338 election for the original target if such a deemed election would directly or indirectly increase the tax liability properly reportable in a return (of any person) with respect to which the time to make an assessment of tax has expired. Section 1.338–5T(c)(2)(iii)(D).

Original Target is Foreign

As noted above, the prerequisite for a regular exclusion election is a domestic original target. If the original target is a foreign corporation, a special rule may permit P to make an express election for a subsequently acquired domestic target affiliate of that foreign corporation while excluding that foreign corporation from the express election as if it were an excludible foreign target affiliate. Section 1.338–5T(c)(2)(iv). The special rule effectively operates as an exception to section 338(f)(2).

An express election may be made for the subsequently acquired domestic target pursuant to the special rule only if that express election includes a regular exclusion election, which will apply to the foreign original target as if it were an excludible foreign target affiliate. In addition, the special rule is applicable only if a regular exclusion election could have been made in an express election for the domestic target had it actually been the original target and had the foreign original target been a target affiliate of that domestic target. Thus, the special rule is not available if P's direct acquisition of the stock of the foreign original target would constitute an invalidation event under the hypothetical circumstances described in the preceding sentence, *e.g.*, if the original foreign target was a controlled foreign corporation during the relevant period. Absent this rule, the order in which domestic and non-CFC foreign targets are acquired would arbitrarily affect the availability of a regular exclusion election.

Foreign Corporation Treated as Domestic

For purposes of applying the provisions relating to the regular exclusion election, a foreign corporation is treated as a domestic corporation if 50 percent or more of its gross income from all sources for the 3-year period ending with the close of its taxable year that precedes the taxable year in which its acquisition date occurs is effectively connected with the conduct by that corporation of a trade or business in the United States. Section 1.338–5T(c)(5). The 50 percent test is similar to the dividend source rule in section 861(a)(2)(B) with one proviso: The Commissioner may exclude any transactions of a foreign corporation during the last year of this 3-year period from gross income for purposes of this 50 percent test if he determines (on the basis of all the facts and circumstances) that the transactions were entered into pursuant to a plan to treat or avoid treating a foreign corporation as a domestic corporation.

A foreign corporation the stock of which is directly acquired by P will not be treated as a domestic corporation, however, if it was a controlled foreign corporation at any time during so much of the taxable year within which its acquisition date occurs as ends on that acquisition date and if it holds stock in a corporation that would be an excludible foreign target affiliate if FT were treated as a domestic corporation. The exception described in the preceding sentence, which operates to bar a regular exclusion election, is designed to ensure that the deemed sale earnings and profits of the corporation that is or would be an excludible foreign target affiliate (if FT were treated as a domestic corporation) are triggered under these circumstances and are taken into account for purposes of applying section 1248 to the domestic sellers of the foreign corporation since the foreign corporation itself does not generally bear United States tax on a sale or deemed sale of the excludible foreign target affiliate stock. The rationale for this exception is the same as for the first invalidation event, as discussed above.

Transitional Exclusion Election

In connection with an express election for an original target (whether foreign or domestic), P may make a "transitional exclusion election" under which some or all of the transitional target affiliates are excluded from the status of target affiliates for purposes of section 338(f)(1). A corporation is a transitional target affiliate if (1) it is described in section 338(h)(6)(B)(i), (2) absent section 338(h)(6)(B), it would be subject to a deemed election under section 338(f)(1) by reason of the express election for the original target, and (3) its acquisition date occurs on or before March 15, 1986 (or after that date but pursuant to a binding contract in effect on February 19, 1986). A corporation that is eligible for the more generous transitional exclusion election because it is a transitional target affiliate will not be treated as an excludible foreign target affiliate.

The transitional exclusion election is provided because taxpayers reasonably could have expected during the transitional period that corporations described in section 338(h)(6)(B)(i) would not be treated as target affiliates and therefore would not be made subject to deemed elections under section 338(f)(1) in the event of an express election for the original target. Detailed rules are provided in § 1.338–5T(j)(5) for cases in which an overlap exists between the transitional exclusion election and the regular exclusion election.

The following table compares the transitional exclusion election to the regular exclusion election:

	Regular exclusion election (§ 1.338–5T(c))	Transitional exclusion election § 1.338–5T(j)(1)–(3)
Targets eligible for election.	Foreign targests acquired after 3–15–86.	Foreign targets and domestic targets described in section 338(h)(6)(B)(i) acquired on or before 3–15–86.
"All or nothing" election.	Yes	No [1].
Invalidation events	Yes	No.
Special carryover basis rule for stock in targets subject to election.	Yes	No.
Special carryover basis rule for certain asset acquisitions when election made[2].	Yes	Yes (but more limited than for regular exclusion election).
Special rule for treating foreign corporation as domestic.	Yes	No.
Section 338 election permitted for corporation other than original target.	Yes	Yes.

[1] It should be noted that, while P is permitted to make the transitional exclusion election for less than all of the transitional target affiliates, a transitional exclusion election for any one transitional target affiliate effectively applies automatically to any other corporation that would be a target but for that transitional exclusion election (*i.e.*, a corporation for which a qualified stock purchase would occur only if the transitional target affiliate were deemed under section 338(a)(2) to purchase its assets).

[2] These rules are discussed below in the section on asset consistency rules.

Special Asset Consistency Rules Applicable to Corporations Described in Section 338(h)(6)(B)(i)

General Rule for Target Affiliate Status

Subject to the transitional rule discussed herein, corporations described in section 388(h)(6)(B)(i) (*i.e.*, foreign and certain domestic corporations) are not excluded from the status of target affiliates for purposes of the asset consistency rule of section 338(e). Thus, an asset acquisition from such a corporation may be a tainted asset acquisition. (Note that if an exclusion election is made, whether regular or transitional, a carryover basis is imposed with respect to certain asset transfers even though those transfers technically do not constitute tainted asset acquisitions. The circumstances in which such a carryover basis is imposed are described in detail below.) The principal abuse against which the asset consistency rule of section 338(e)(1) is directed is the ability to selectively step-up the basis of directly acquired assets while preserving historic asset bases and tax attributes within the target. Because this abuse exists whether or not the transferor is described in section 338(h)(6)(B)(i), corporations described therein are not exempt, prospectively, from the asset consistency rule. The greatest potential hardship resulting from this rule is that a tainted asset acquisition from such a corporation may cause a deemed election under section 338(e) and § 1.338–4T(f)(1)(ii). The purchasing corporation may avoid this hardship, however, by filing a protective carryover election.

Transitional rule

Under the transitional rule, an asset acquisition from a corporation described in section 338(h)(6)(B)(i) that occurs on or before March 15, 1986 (or after that date but pursuant to a binding contract in effect on February 19, 1986 will in no case be considered a tainted asset acquisition. Section 1.338–5T(j)(6)(i). Thus, the acquiring P group member does not take a carryover basis in that asset pursuant to the asset consistency rule and, in the absence of a protective carryover election, is not at risk for a deemed election under section 338(e) as a result of that acquisition. This transitional rule exception is provided because taxpayers reasonably could have expected that asset acquisitions during the transitional period from corporations described in section 338(h)(6)(B)(i) would not be subject to the asset consistency rule of section 338(e).

Carryover Asset Basis: Regular Exclusion Election

As a general rule, a carryover basis under the authority of section 338 is imposed with respect to asset transfers only when an express election is *not* made, since the requirement is directed toward cases in which P wishes to avoid section 338 treatment and therefore does not make an express election. The only two exceptions to the general rule arise when a regular or transitional exclusion election is made.

If a regular exclusion election is made in connection with an express election for DT, then a P group member that acquires an asset from an excludible foreign target affiliate (or from a non-target foreign target affiliate) during the consistency period must take a carryover basis in that asset as if the acquisition were subject to an affirmative action carryover election if, in the absence of the express election, the asset acquisition would be a tainted asset acquisition. Section 1.338–5T(c)(4). The District Director does not have authority, in this context, to cause a deemed election for an excludible foreign target affiliate in lieu of a carryover basis in the transferred asset. Absent this special asset consistency rule, the P group could make a regular exclusion election for excludible foreign target affiliates but selectively step-up the basis of some assets held by such corporations (or by non-target foreign target affiliates). Under the special asset consistency rule, a carryover basis is retained both with respect to assets that remain inside excludible foreign target affiliates and with respect to assets directly acquired by P group members during the consistency period from such corporations and from non-target foreign target affiliates. Thus, the foreign corporations are treated, in effect, as a separate subgroup with respect to which an express election is not made.

Carryover Asset Basis: Transitional Exclusion Election

A carryover basis rule similar to the one applicable in the regular exclusion election context applies to asset acquisitions from (1) a transitional target affiliate for which a transitional exclusion election is made or (2) any other corporation that would be subject to a deemed election under section 338(f)(1) but for a transitional exclusion election. Thus, asset acquisitions from non-target foreign target affiliates are not subject to the carryover basis rule in the transitional exclusion election context. Compare § 1.338–5T(j)(6)(iii) with § 1.338–5T(c)(4). For a special overlap rule, see § 1.338–5T(j)(5)(iv).

Treatment of Stock Described in Section 338(h)(6)(B)(ii)

General Rule for Section 338(h)(6)(B)(ii), Stock

Under section 338(h)(6)(B)(ii), stock held by a target affiliate of target in a foreign corporation, a DISC, or a section 1248(e) corporation is excluded from the operation of section 338 except as otherwise provided in regulations (and subject to any conditions specified therein). Except during a transitional period, the temporary regulations added by this document provide that such stock is *not* excluded from the operation of section 338. Section 1.338–5T (c)(1)(ii) and (j)(7).

The apparent purpose of section 338(h)(6)(B)(ii) is to approximate the treatment that was available under repealed section 334(b)(2). Thus, for example, assume that domestic target DT holds all of the stock of domestic corporation DT1, and that DT1 holds all of the stock of controlled foreign corporation CFCT2. Under repealed section 334(b)(2), in the event of a liquidation of DT, a section 1248(f) dividend would not be triggered to DT1 with respect to its CFCT2 stock unless P also chose to liquidate DT1. In the section 338 context, absent section 338(h)(6)(B)(ii), an express election for DT causes a deemed election for DT1 under section 338(f)(1), and section 1248(f) is triggered by DT1's deemed sale of CFCT2 stock. Section 338(h)(6)(B)(ii) could be applied to bar section 1248(f) dividend at the DT1 level. By contrast, section 338(h)(6)(B)(ii) does not bar a section 1248(f) dividend at the DT level if DT rather than DT1 holds the CFCT2 stock.

Section 338(h)(6)(B)(ii) thus creates an arbitrary distinction between stock in a foreign corporation that is directly held by an original target for which an express election is made (DT in the above example) and stock in a foreign corporation that is held by a domestic target affiliate of the original target (DT1 in the above example). Because there is no reason not to treat CFC2 stock in the above example like any other recapture asset of DT1, the temporary regulations provide that section 338(h)(6)(B)(ii) does not apply except during a transitional period. Thus, section 1248(f) consequences with respect to CFCT2 stock will not turn on whether DT1 rather than DT holds the CFCT2 stock (except during the transitional period).

Transitional Rule for Section 338 (h)(6)(B)(ii) Stock

Under a transitional rule set out in § 1.338–5T(j)(7), stock described in

section 338(h)(6)(B)(ii) that is held by a target subject to a deemed election under section 338(f)(1) may be excluded from the operation of section 338 if the acquisition date of the target occurs on or before February 12, 1986 or pursuant to a binding contract in effect on that date ("eligible target"). In order to obtain this treatment, P must make a transitional stock exclusion election in connection with an express election made for the original target. The transitional stock exclusion election may be made for one or more of the eligible targets. The transitional exclusion election applies to all excluded stock held by the eligible target for which the election is made, *i.e.*, all of the stock described in section 338(h)(6)(B)(ii) that is held by that eligible target at the close of its acquisition date, other than stock of a transitional target affiliate for which a transitional exclusion election is not made. Thus, excluded stock may include stock of a corporation that is not a target affiliate.

If a transitional stock exclusion election is made for an eligible target, then that eligible target is not deemed under section 338(a) to sell and purchase the excluded stock it holds at the close of its acquisition date. Thus, that eligible target will not recognize a section 1248(f) dividend with respect to excluded stock. In addition, that eligible target's basis (as new target) in excluded stock is the same as its basis in that stock as old target.

The transitional stock exclusion election is provided because taxpayers reasonably could have expected during the transitional period that stock described in section 338(h)(6)(B)(ii) would be excluded from the operation of section 338.

Special Rules for Operation of Offset Prohibition Election in International Context

Offset Prohibition Election Inapplicable if no U.S. Tax to Transferor

As noted above, the normative consequence of a tainted asset acquisition under the asset consistency rule of section 338(e) is a carryover basis to the acquiring P group member. If the tainted asset transfer occurs within a P group that does not file consolidated returns ("INA acquisition"), however, the acquiring P group member takes a basis in the transferred asset that is determined without regard to the carryover basis election if an offset prohibition election is made in connection with a protective carryover election. As a consequence of the offset prohibition election, the transferor in an INA acquisition may not offset the gain recognized on the transfer ("INA gain") by any deductions and the tax attributable to INA gain may not be offset by certain tax credits. See § 1.338–4T(f)(6)(iv) *Answer 2*(ii). If the tainted asset transfer occurs within a P group that files consolidated returns ("ICA acquisition") and if deferred gain on that transfer is restored because the transferor ceases to be a member of the P group ("remaining ICA gain amount"), then the existence of an offset prohibition election prevents a reduction (by the remaining ICA gain amount) in the transferred asset's basis in the hands of the transferee. As in the case of INA gain, the remaining ICA gain amount may not be offset by deductions of the P group and the tax attributable to that gain may not be offset by certain tax credits available to the P group. See § 1.338–4T(f)(6)(iv) *Answer 3*(iv). A carryover basis (or basis reduction) is not imposed when an offset prohibition election applies because, by reason of the limitations on deductions and credits, an appropriate tax on the transferor's gain will be collected.

Under the temporary regulations added by this document, an otherwise effective offset prohibition election does not apply to transfers by foreign and certain other corporations since, in many circumstances, an appropriate U.S. tax cannot be collected from the transferor. If, however, a foreign transferor corporation is required to pay U.S. tax on the transfer because income or gain on that transfer is effectively connected with the conduct by that transferor of a trade or business within the United States, then the offset prohibition election may apply to that asset. Section 1.338–5T(d)(1).

Special Limitation on Foreign Tax Credit When Offset Prohibition Election Made

The temporary regulations added by this document add a special section 904 limitation for offset prohibition gain. "Offset prohibition gain" is gain that is subject to limitations on deductions and credits by reason of an offset prohibition election. This special limitation ensures an appropriate foreign tax credit for foreign source offset prohibition gain. However, while foreign taxes on other income items and from other taxable years cannot be applied against any excess limitation for offset prohibition gain, foreign taxes attributable to offset prohibition gain ("offset prohibition foreign taxes") that exceed the separate limitation for offset prohibition gain may be credited in the current year to the extent that the otherwise applicable section 904 limitation exceeds the foreign taxes subject to that limitation that are paid or accrued during the current year. Any remaining offset prohibition foreign taxes carryover to other years as excess foreign taxes subject to the otherwise applicable limitation. Section 1.338–5T(d)(2).

Special Exceptions to Section 338(e)(1) Under the Authority of Section 338(e)(2)(D)

The temporary regulations added by this document add two exceptions to the asset consistency rule of section 338(e)(1) under the authority of section 338(e)(2)(D). Asset acquisitions subject to one of these exceptions, accordingly, will not be considered tainted asset acquisitions. The first exception is for an asset transfer in which the transferee takes a stepped-up basis solely by reason of the transferor's recognition of gain under section 367(a). The second exception applies to the transfer of foreign currency in certain cases. Section 1.338–5T(e). For additional exceptions under the authority of section 338(e)(2)(D), see § 1.338–4T(f)(5).

Operation of Section 1248 in Section 338 Context

Background

For a foreign target having solely trade or business income that is *not* effectively connected, the manner of taxing its deemed sale gain under section 338(a)(1) raises two questions: First, how should section 1248 be applied in the section 338 context? Second, do policy and administrative considerations regarding this foreign target outweigh policy and administrative considerations, developed in the context of domestic targets, that a purchaser's election under section 338 should not create a tax to a selling group filing consolidated returns?

In connection with the first question, in general, the United States directly taxes trade or business income of a foreign corporation that is effectively connected with its conduct of a trade or business within the United States. If a foreign corporation has neither effectively connected income nor U.S. source income but is a controlled foreign corporation ("CFC"), as defined in section 957, a principal mechanism since 1962 for exacting an indirect United States tax with respect to its income has been section 1248, under which a U.S. person holding at least 10 percent of the stock of the CFC (a "U.S. shareholder") is required to treat gain on the disposition of such stock as a dividend to the extent of the CFC's earnings and profits that are attributable to the

transferred stock. If the foreign corporation is not a CFC, foreign personal holding company, foreign investment company, or, in the case of a foreign corporation that is a CFC, if the U.S. person holds less than 10 percent of its stock, the United States traditionally has declined to exact either a direct or an indirect tax on the foreign corporation's noneffectively connected income unless and until it is actually distributed.

In connection with the second question, a basic policy of section 338 in the domestic context is that P should not be permitted to unilaterally affect the tax liability of the seller of domestic target stock by making a section 338 election. Thus, under section 338(h)(9), a target acquired from a consolidated selling group is disaffiliated for purposes of its deemed sale of assets. As a result, P cannot trigger income reportable in the seller's consolidated return by making a section 338 election for the domestic target. Because deemed sale gain therefore is reported in a return for which new target is liable, P indirectly bears the liability for that tax. (Although an election under section 338(h)(10) causes deemed sale gain to be reported in the seller's consolidated return, both the seller and P must agree to that election.) Allowing P (the purchaser of all of the CFC's stock) to unilaterally elect section 338 and thereby affect the section 1248 dividend recognized by the U.S. sellers of the CFC is not consistent with this basic policy.

Allowing P to unilaterally affect the U.S. seller's section 1248 dividend would also create problems of administration. In order for the seller to properly calculate its section 1248 dividend, that seller would need to be notified of the section 338 election. Effective tax administration, moreover, would require that the Internal Revenue Service be notified of the identity of the U.S. sellers that may be affected under section 1248 by the section 338 election.

After reviewing the policy and administrative considerations, the Treasury Department has determined that the United States should indirectly tax under section 1248 the selling U.S. shareholders of CFC stock on the CFC's deemed sale gain under section 338(a)(1). This indirect tax is consistent with the traditional scope for exercising United States taxing jurisdiction on CFC's and would be imposed under the circumstances contemplated by existing law, principally section 1248.

Taxing a U.S. shareholder seller CFC stock on the CFC's deemed sale gain is appropriate. Section 338(a)(1) provides that the deemed sale is treated as if it were a transaction to which section 337 applies. Recapture items that are recognized notwithstanding section 337 increase section 1248 earnings and profits. *See Pielemeier* v. *United States*, 543 F.2d 81 (9th Cir. 1976); *Brigham* v. *United States*, 539 F.2d 1312 (3d Cir. 1976). This increase in section 1248 earnings and profits reflects an adjustment to the depreciation deductions ordinarily reflected in those earnings and profits. Upon the actual liquidation of a CFC under section 337, the section 1248 dividend reported by a U.S. shareholder takes into account in the single transaction (and subject to a single limitation for the shareholder's recognized gain) both the unadjusted section 1248 earnings and profits and the recapture earnings and profits. The result should be the same when section 337 is treated as applying to the CFC by reason of section 338(a)(1). In contrast, a domestic corporation typically reports its depreciation deductions and any recapture of those deductions in different taxable years.

Taking deemed sale earnings and profits into account in determining the section 1248 dividend to U.S. sellers also increases the likelihood that an appropriate foreign tax credit will be allowed with respect to the deemed sale earnings and profits. The prior deduction of the recaptured item will have decreased the earnings and profits of a prior taxable year of the CFC. Foreign taxes paid with respect to prior years, however, will be deemed paid by the U.S. seller to the extent that the section 1248 dividend derives from earnings and profits from prior years. (If earnings and profits from prior years were previously distributed, foreign taxes may be carried forward five years.) If deemed sale earnings and profits were taxed to the purchaser instead of the U.S seller, it is unlikely that an appropriate foreign tax credit would be allowed with respect to such income.

Taxing the selling U.S. shareholder on the deemed sale gain yields a result analogous to treatment of the deemed sale gain of a domestic target that was not included in a consolidated return of a selling group. That domestic target's deemed sale gain is included with its other income (or loss) in the final income tax return as old target for so much of its regular taxable year that was terminated at the close of its acquisition date. See § 1.338–1T(f)(2)(i). Similarly, a CFC's deemed sale gain is taken into account with other income (or loss) in its section 1248 earnings and profits for so much of its regular taxable year that was so terminated.

It is impractical to tax the purchaser ("P") on the recapture earnings and profits instead of the selling U.S. shareholder. In view of the manner in which the United States traditionally has taxed the earnings of such a foreign target, P (if it were to be taxed) ideally would be taxed on the section 1248 dividend that the U.S. sellers of target stock would have recognized had they been required to take into account the target's deemed sale earnings and profits. Thus, P would have to ascertain whether S was a U.S. shareholder. Moreover, in order to determine the amount of a section 1248 dividend, P would need detailed tax information relating to the holding period and basis of those selling U.S. shareholders in target stock. Even assuming that the correct dividend amount is calculated, taxing P would be a departure from the basic principle of section 1248 of indirectly taxing the shareholders of a CFC, especially since the actual tax effect to P of that dividend likely would differ from the tax effect of that dividend to the U.S. sellers due to differences in foreign tax credit positions and rates of U.S. tax as between P and such sellers. If P were a foreign corporation that did not file U.S. income tax returns, special procedures would be necessary in order to collect *any* tax measured by reference to deemed sale earnings and profits (*e.g.*, a toll charge in the amount of the tax as a condition for a valid section 338 election) which would have the indirect effect of S bearing the tax. Policy considerations aside, it is certainly more practical to tax S than P on the deemed sale earnings and profits.

In conclusion, these policy and administrative considerations favor imposing an indirect tax on deemed sale gain only on the U.S. seller of CFC stock and only through existing statutory mechanisms (with certain modifications), principally section 1248. An indirect tax should not be imposed on P. These policy and administrative considerations outweigh the domestic section 338 policy that P should not be permitted to unilaterally affect the tax liability of the seller of target stock by making a section 338 election.

Application of Section 1248 to Sellers of Stock in Foreign T

Temporary regulations § 1.338–5T(g), as added by this document, provides rules for the operation of section 1248 in connection with a section 338 election for a target that is a controlled foreign corporation ("CFCT"). As noted above, the deemed sale of assets under section 338(a)(1) is governed by section 337. Had CFCT actually sold its assets in a sale described in section 337, amounts a

domestic corporation would have recognized notwithstanding the operation of section 337 would have been taken into account as earnings and profits for purposes of applying section 1248. See §§ 1.1248–2(d)(2)(ii) and 1.1248–3(b)(2)(ii). Section 1.338–5T(g)(2)(i) and (3) makes clear that the deemed sale under section 337 also creates earnings and profits ("deemed sale earnings and profits") that must be taken into account by the U.S. persons subject to section 1248 that sell CFCT stock to P on CFTC's acquisition date. However, any gains (or losses) that a domestic corporation would have recognized in the deemed sale of assets by reason of the operation of section 338(c)(1) are disregarded. (As discussed in more detail below, a tax on section 338(c)(1) gain may be collected from minority CFCT shareholders that do not transfer their CFCT stock to P.)

A special rule under section 1248 is provided for sales of CFCT stock to the P group by U.S. persons during CFCT's 12-month acquisition period but prior to CFCT's acquisition date ("staggered stock sale rule"). The staggered stock sale rule attributes to such CFCT stock the same share of deemed sale earnings and profits that would have been attributed to such stock had it been sold on CFCT's acquisition date, i.e., on last day of old CFCT's final taxable year. Absent this rule, only a pro rata portion of that share, based on the number of days in old CFCT's final taxable year during which the seller held the CFCT stock, would be attributed to that stock. Moreover, absent the staggered stock sale rule, *none* of the deemed sale earnings and profits would be attributed to that stock if it were sold during the prior taxable year. This staggered stock sale rule also applies to earnings and profits resulting from *actual* asset sales occurring on or after the first day of CFCT's taxable year in which the particular stock sale occurs and prior to the close of CFCT's acquisition date. Such an actual asset sale creates earnings and profits for this purpose, however, only to the extent of the gain on the asset sale that would have been recognized by old CFCT had it been a domestic corporation, had it held that asset on its acquisition date, and had the deemed sale price of that asset been equal to the actual amount realized on the sale or exchange of that asset. Section 1.338–5T(g)(2)(i) and (4). The staggered stock sale rule does not apply to stock transfers occurring on or before February 12, 1986 or after that date but pursuant to a binding contract in effect on that date.

Carryover CFCT Stock

A special rule under section 1248 also is provided for "carrover CFCT stock," *i.e.*, CFCT stock held by non-P group members on the close of CFCT's acquisition date ("minority stock") and nonrecently purchased CFCT stock as defined in section 338(b)(6)(B) for which a gain recognition election under section 338(b)(3)(A) is not made. With respect to carryover CFCT stock, the earnings and profits of old CFCT (along with the foreign taxes attributable to such earnings and profits) carryover to new CFCT for purposes of (1) characterizing distributions with respect to carryover CFCT stock as dividends, (2) characterizing gain on the disposition of CFCT stock as a section 1248 dividend, and (3) determining the amount of the foreign tax credit resulting from such dividends. The amount of old CFCT's earnings and profits that may be taken into account with respect to a share of carryover CFCT stock, however, shall not exceed the amount of the section 1248 dividend that the holder of that share would have recognized had it sold that share at fair market value to a member of the P group on CECT's acquisition date (or, with respect to nonrecently purchased stock, had such stock been subject to a gain recognition election) ("section 1248 amount"). Section 1.338–5T(g)(6).

The carryover CFCT stock rule ensures that appropriate section 1248 consequences will attend a post-acquisition date disposition of such stock. In addition, the rule eliminates the incentive for holders of minority stock to retain such stock until after CFCT's acquisition date, *i.e.*, until after its earnings and profits account is eliminated. Absent this rule, holders of minority stock could avoid a section 1248 dividend measured by old CFCT's earnings and profits simply by waiting until after CFCT's acquisition date to transfer such stock to P. Finally, the carryover CFCT stock rule serves as a mechanism whereby a tax on section 338(c)(1) gain is borne (if at all) only by the persons that caused that gain to exist. Thus, for purposes of determining the section 1248 amount, all of the earnings and profits of old CFCT resulting from gain (or loss) that a domestic corporation would have recognized by reason of the operation of section 338(c)(1) are allocated solely to the carryover CFCT stock that causes section 338(c)(1) to apply to the transaction, *e.g.*, carryover CFCT stock that is minority stock and that is not purchased by a member of the P group during the one-year period beginning on CFCT's acquisition date. The policies underlying the rules for carryover CFCT stock are generally similar to those underlying regulations promulgated under section 367(b).

Special CFC Definition

A special definition is provided for determining whether a foreign target is a controlled foreign corporation. Under this definition, for purposes of determining whether a foreign target is a controlled foreign corporation for a relevant taxable year, all sales of its stock that are included in the qualified stock purchase of such stock are deemed to occur on that foreign target's acquisition date if that foreign target ceases to be a CFC solely by reason of the qualified stock purchase of its stock. For example, assume that foreign purchasing corporation FP purchases 60 of the 100 outstanding shares of CFCT stock from domestic corporation S on December 31, 1986, and purchases the remaining 40 shares on January 1, 1987. Absent the special definition, CFCT is not a controlled foreign corporation in 1987 and, therefore, the earnings and profits resulting from its deemed sale of assets are not properly reflected in S's section 1248 dividend. The special definition ensures that such earnings and profits are properly reflected in that dividend.

Treatment of Gain On Deemed Sale as Effectively Connected Income and as Income From Sources Within the United States

Under temporary regulations § 1.338–5T(h)(1), as added by this document, a foreign target's gain on the deemed sale of an item of property under section 338(a)(1) is treated as income that is effectively connected with the conduct of a trade or business within the United States and as income from sources within the United States if, for the three-year period ending with the close of the taxable year preceding old foreign target's final taxable year (or for so much of that 3-year period as that target held the particular item of property), more than 50 percent of the gross income it derived from that item of property was effectively connected income. Similarly, under § 1.338–5T(h)(2), a domestic target's gain on the deemed sale of an item of property is treated as income from sources within the United States if, for the three-year period ending with the close of the taxable year preceding old domestic target's final taxable year (or for so much of that 3-year period as that target held the particular item of property), more than 50 percent of the gross income it derived from that item of

property was income from sources within the United States. No inference should be drawn regarding the United States tax treatment of gain amounts not described in § 1.338–5T(h). These rules are designed to eliminate uncertainty as to the source of and the United States tax with respect to gain arising in the deemed sale of assets.

Amendments to § 1.338–1T

Special Suspension of Time Eliminated

Prior to publication of this document, § 1.338–1T(j) provided that the last day for making an election under section 338 was suspended until the date specified in a Treasury decision setting forth regulations under section 338(h)(6)(B) if (1) the target was a corporation described in section 338(h)(6)(B)(i) that had a target affiliate or (2) the target had a target affiliate that was described in section 338(h)(6)(B)(i) or that held stock in a foreign corporation, a DISC, or a corporation described in section 1248(e). In order to make a section 338 election notwithstanding the suspension, a special declaration was required in the statement of section 338 election.

Under § 1.338–1T(c), as amended by T.D. 8068, a section 338 election for any qualified stock purchase occurring after August 31, 1982, need not be filed before the later of the due date specified in section 338(g)(1) or March 15, 1986. Under § 1.338–1T(j), as amended by this document, the March 15, 1986, date also applies to corporations described in § 1.338–1T(j)(1), and no suspension of time after that date is provided for such corporations.

Under § 1.338–1T(j), as amended by this document, the requirement of a special declaration in the statement of section 338 election is retained but applies only to statements of section 338 election that are filed on or before March 14, 1986 and that do not contain a transitional or regular exclusion election or a transitional stock exclusion election.

Prior to amendment by this document, a statement of section 338 election that omitted the special declaration could be perfected only by the timely filing of a perfecting declaration. As amended by this document, however, § 1.338–1T(j) provides that such a statement of section 338 election may be perfected either by filing a perfecting declaration on or before March 15, 1986, or by making a timely regular exclusion election, transitional exclusion election, or transitional stock exclusion election. The making of such an election would be inconsistent with an intent *not* to perfect the statement of section 338 election.

The class of acquisitions subject to § 1.338–1T(j) is broadened by this document to include targets described in section 338(h)(6)(B)(i) that do *not* have a target affiliate ("stand-alone targets"). Stand-alone targets are included because of the substantial uncertainty that existed, prior to publication of this document, as to the application of section 338 to corporations described in section 338(h)(6)(B)(i). The effect of this rule is that a statement of section 338 election filed for such a corporation on or before March 14, 1986, is valid only if it contains the special declaration (or one of the exclusion elections) or is perfected pursuant to the procedures described above.

Notice to U.S. Persons Required

As noted above, the section 1248 dividend for a U.S. person that sells stock of a target that is a controlled foreign corporation ("CFCT") to P may be affected by P's decision to file a section 338 election for CFCT. Minority shareholders that retain CFCT stock also may be affected by that election. Accordingly, a new § 1.338–1T(k)(7) establishes a notice requirement for such persons. The penalty for failure to provide notice to certain U.S. persons is the invalidation of the section 338 election.

Schedule of Corporations

Section 1.338–1T(e) provides that a schedule containing information relating to corporations subject to an election under section 338 must be attached to the statement of section 338 election and to certain returns of targets subject to that election. As amended by this document, § 1.338–1T(e) also requires that the schedule contain information on excludible foreign target affiliates that are subject to a regular exclusion election. In addition, the schedule must contain information on the U.S. persons to whom P is required to provide notice under new § 1.338–1T(k)(7).

New rules are provided regarding the returns to which the schedule and certain other "required items" must be attached under § 1.338–1T(e)(2). If a U.S. person is required to report a section 1248 dividend in its income tax return by reason of its sale of foreign target stock to P, then the required items must be attached to that return. Section 1.338–1T(e)(2)(v)(B). Other U.S. persons that hold stock in foreign target on its acquisition date or on the first day thereafter must attach the required items to the Forms 5471 they are required to file with respect to foreign target for its taxable years that include those days. Section 1.338–1T(e)(2)(v)(C). (As part of the notice requirement, P must provide the required items to the U.S. persons described in the preceding two sentences.) If a foreign target's first return as new target is for a taxable year subsequent to its first taxable year, then the required items must be attached to that return (this is an existing requirement). Section 1.338–1T(e)(2)(v)(D). (Section 1.338–1T(e)(2)(v)(C) and (D) replaces § 1.338–1T(k)(6) of the existing regulations, which is removed by this document.)

Under § 1.338–1T(e)(3), the standard penalty for failure to comply with the requirements relating to the schedule of corporations is invalidation of the penalty waiver rule of § 1.338–1T(h) (automatic waiver of certain penalties). (The penalty will not apply solely by reason of the failure to attach the required items to certain returns over which P may have no control.) Under § 1.338–1T(e)(3), as amended by this document, the penalty also applies when amended returns required by reason of the retroactive invalidation of a regular exclusion election are not timely filed.

Miscellaneous Amendments

A number of minor technical and clarifying amendments are made to § 1.338–1T. (The enumeration in this paragraph is not inclusive.) Section § 1.338–1T(d)(2) (relating to the treatment of a common parent as the agent of P for purposes of signing the statement of section 338 election) is amended to make clear that it serves merely as a cross-reference to the relevant consolidated return regulation and is not intended to alter the rules provide therein. A number of amendments are made to § 1.338–1T(k). The meaning of "subject to United States tax" in § 1.338–1T(k) is clarified. (This change is not intended to be substantive.) Section § 1.338–1T(k)(1) is amended to apply to *any* election made under the authority of section 338, *e.g.*, the protective carryover election under § 1.338–4T(f)(6). Similarly, section 1.338–1T(k)(5), which exempts certain foreign corporations from the requirement that an employer identification number be furnished, is made applicable to *any* election made under the authority of section 338.

Amendments to § 1.338–4T

Exception to Section 338(e) for Property Subject to Timely Disposition

Section 1.338–4T(f)(5) *Answer* (vii) provides that an asset acquisition is subject to an exception to section 338(e)(1) (and therefore will not be a tainted asset acquisition for purposes of the consistency rule of section 338(e)) if

the P group disposes of that asset to an unrelated person (not including a target affiliate of target) on or before the date specified in § 1.338–4T(f)(5) *Answer* (vii). This document amends that provision to also prohibit disposition to a target affiliate of an affected target. In addition, this document amends the provision to provide that the asset will be considered disposed of if the P group member holding the asset ceases to be a member of the P group (and ceases to be related to any member of the P group) on or before the specified date. A corporation is not treated as ceasing to be a member of the P group, however, if it ceases to exist during the consistency period by reason of a transaction described in section 381(a) and if the acquiring corporation (within the meaning of section 381(a)(1)) is a member of the P group.

Amendment to Rules Relating to P Group Members That Must Sign the Protective Carryover Election Statement

Under § 1.338–4T(f)(6)(ii) *Answer 1* (ii), each corporation included in the P group at any time during so much of the target's consistency period as ends on the day a protective carryover election is filed must join in making that protective carryover election. Under that provision, as amended by this document, a corporation that ceases to be a P group member prior to the day on which the protective carryover election is filed ("former P group member") need not join in making the protective carryover election if it did not make a tainted asset acquisition (as defined in § 1.338–4T(f)(6)(i)(A)) while a member of the P group. Caution should be exercised when relying on the rule described in the preceding sentence, however, if the former P group member made *any* asset aquisitions during the consistency period from the original target, an affected target, or a target affiliate of one of those targets, since it is not always clear that an acquisition is not a tainted asset acquisition. See, *e.g.*, the exception in § 1.338–4T(f)(3) for acquisitions in the ordinary course of trade or business. Note, however, that an asset acquisition that otherwise would be a tainted asset acquisition may be subject to the timely disposition exception of § 1.338–4T(f)(5) *Answer* (vii) if the former P group member ceased to be a member within the time specified in § 1.338–4T(f)(5) *Answer* (vii).

An additional exception to the requirement that all P group members must join in making the protective carryover election is made for certain foreign P group members, whether or nor they are members on the day the protective carryover election is filed. Under this exception, a representative of a foreign P group member is not required to sign the protective carryover election if that foreign P group member (1) is not required to file a United States income tax return for its taxable year in which the protective carryover election is filed, (2) is not, at any time during its taxable year in which the protective carryover election is filed, a controlled foreign corporation, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2), (3) does not purchase any of the stock included in the qualified stock purchase of the target (or of an affected target), and (4) does not hold stock in a foreign P group member that satisfies one or more of the three preceding conditions. If a foreign P group member is a controlled foreign corporation, its United States shareholders may make the protective carryover election on its behalf.

A foreign P group member subject to the exception described in the preceding paragraph must be identified in the protective carryover election as if it were required to join in making the election. Tainted asset acquisitions made by such a corporation will be subject to the affirmative action carryover basis rules, however, unless the corporation joins in making the election, *i.e.*, unless a representative signs the protective carryover election. The District Director will not have authority under these circumstances to impose a deemed election under section 338(e)(1) pursuant to § 1.338–4T(f)(1)(ii).

Miscellaneous Amendments

A number of minor technical and clarifying amendments are made to § 1.338–4T. (The enumeration in this paragraph is not inclusive.) A more comprehensive definition of a "tainted asset acquisition" is provided in amended § 1.338–4T(f)(6)(i)(A). As amended, that provision also clarifies that the protective carryover election is irrecovable. *Answer* 2 (II)(B) and *Answer 3* (iv)(D) of § 1.338–4T(f)(6)(iv) (relating to restrictions on the use of certain credits when an offset prohibition election is made) are clarified. Finally, § 1.338–4T(k)(1) *Answer 3* (relating to the operation of section 338(h)(12)) is amended to clarify that nonrecognition on actual asset sales pursuant to section 338(h)(12) is available notwithstanding that a liquidation of target immediately after the plan of complete liquidation was adopted would have been governed by section 332, provided that each corporation that would have been a distributee corporation in that hypothetical liquidation is liquidated under the circumstances described in section 337(c)(3).

A number of typographical errors in § 1.338–4T are corrected by this document.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act of 1980

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The collection of information contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (Control number 1545–0702).

Drafting Information

The principal author of these temporary regulations is Duane H. Pellervo of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style."

List of Subjects

26 CFR 1.301–1—1.383–3

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, Parts 1 and 602 of Title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * §§ 1.338–1T, 1.338–4T, 1.338–5T, and 1.338(h)(10)–1T also issued under 26 U.S.C. 338.

Par. 2. A new § 1.338–5T is added immediately after § 1.338–4T to read as follows:

§ 1.338–5T International aspects of section 338 (Temporary).

(a) *Introduction*—(1) *Effective date.* Except as otherwise provided in this section, this section applies to stock acquisitions for which the acquisition date (determined without section 224(d)(5) of TEFRA) occurs after August 31, 1982.

(2) *Outline of topics.* In order to facilitate the use of this section, this subparagraph (2) lists the paragraphs, subparagraphs and subdivisons contained in this section.

(a) Introduction.
(1) Effective date.
(2) Outline of topics.
(3) Application of § 1.338–4T to foreign persons and certain domestic corporations.
(4) Procedural rules.
(b) Nomenclature and definitions.
(1) Nomenclature.
(i) Corporations.
(ii) Individuals.
(2) Definitions.
(c) Application of section 338 to corporations and stock described in section 338(h)(6)(B).
(1) General rule.
(2) Elective exclusion of foreign corporations from target affiliate status.
(i) General rule.
(ii) Excludible foreign target affiliate.
(iii) Regular exclusion election not available in certain cases.
(A) General rule.
(B) Controlled foreign corporation directly acquired.
(C) Excludible foreign target affiliate holds stock in domestic corporation.
(D) Exception when statute of limitations has expired.
(iv) Special rule if original target is a foreign corporation.
(A) General rule.
(B) Foreign target as original target.
(C) Qualifying domestic target affiliate.
(D) Special rule inapplicable if express election for original foreign target filed.
(E) Effect of invalidation event.
(F) Coordination with protective carryover election.
(v) Procedure for making regular exclusion election.
(A) General rule.
(B) Contents of regular exclusion statement.
(C) Transitional rule.
(vi) Annotation on required schedule.
(vii) Procedure if regular exclusion election invalidated subsequent to filing.
(A) Required schedule must be amended.
(B) Filing of amended returns.
(3) Effect of regular exclusion election on basis in excludible foreign target affiliate stock.
(i) General rule.
(ii) Excess basis amount eliminated.
(iii) Subject to section 1248(f)(1).
(iv) Special rules if foreign target treated as domestic.
(v) Cross-reference.
(4) Special asset consistency rule if regular exclusion election made.
(i) General rule.
(ii) Deemed election not imposed.
(iii) Relevant target.
(5) Certain foreign corporations treated as domestic corporations.
(i) General rule.
(ii) Event year.
(iii) Exception.
(6) Examples.
(d) Special rules applicable to offset prohibition election.
(1) Offset prohibition election inapplicable to certain transfers
(i) General rule.
(ii) Exception for certain foreign transferors.
(2) Limit on crediting foreign tax against U.S. tax on offset prohibition gain.
(i) Definitions.
(A) Offset prohibition gain.
(B) Offset prohibition foreign taxes.
(C) Otherwise applicable section 904 limitation.
(ii) One-way special foreign tax credit limitation for offset prohibition foreign taxes.
(iii) Excess special limitation disregarded for purposes of section 904(c).
(iv) Special rule for creditability of offset prohibition foreign taxes in excess of special limitation.
(v) Coordination with restricted credit provisions of § 1.338–4T(f)(6)(iv).
(3) Examples.
(e) Certain transactions subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D).
(1) Basis step-up attributable to gain recognized under section 367.
(2) Acquisition of foreign currency.
(i) General rule.
(ii) No inference regarding character of gain or loss.
(f) Effect of section 338 on foreign target.
(g) Operation of section 1248 if section 338 election made.
(1) Scope.
(2) General rules.
(i) Transfer of CFCT on or before acquisition date.
(ii) Effect of gain recognition election.
(iii) Carryover CFCT stock.
(iv) Special rule for determining status as controlled foreign corporation.
(v) Section 1248(c)(2) subsidiary.
(vi) Special deemed stock sale rule.
(3) Enhanced earnings and profits amount if stock transferred on CFCT's acquisition date.
(4) Enhanced earnings and profits amount if stock transferred before CFCT's acquisition date.
(i) General rule.
(ii) Affected taxable year of CFCT.
(iii) CFCT's recapture earnings and profits.
(iv) Recapture amount.
(v) Exception to enhancement rule of paragraph (g)(4)(i) for transitional period stock transfer.
(vi) Section 1248(c)(2) subsidiary with same taxable year as CFCT.
(A) Recapture amounts for subsidiaries.
(B) Earnings and profits of subsidiaries.
(C) Recapture earnings and profits for block.
(D) Application of general rule.
(vii) Section 1248(c)(2) subsidiary with taxable year different from CFCT's.
(5) Section 338(c)(1) inapplicable.
(6) Carryover of old CFCT earnings and profits for purposes of carryover CFCT stock.
(i) General rule.
(ii) Cap on carryover of earnings and profits.
(iii) Section 1248 amount for stock other than section 338(c)(1) stock.
(iv) Section 1248 amount for section 338(c)(1) stock.
(v) Section 338(c)(1) stock.
(vi) Section 338(c)(1) amount.
(vii) Old CFCT earnings and profits unaffected by post-aquisition date deficits.
(viii) Character of CFCT stock as carryover CFCT stock eliminated upon disposition.
(7) Application of principles of this paragraph to section 1246.
(8) Examples.
(h) Treatment of gain in deemed sale of assets as income effectively connected with the conduct of a trade or business within the United States and as from sources within the United States.
(1) Foreign target.
(2) Domestic target.
(3) Measurement period.
(4) No inference regarding transactions not described.
(i) Reserved.
(j) Transitional rules for corporations and stock described in section 339(h)(6)(B).
(1) Transitional elective exclusion from target affiliate status.
(2) Transitional target affiliate.
(i) General rule.
(ii) Acquired on or before March 15, 1986.
(iii) Hypothetical acquisition date of transitional target affiliate.
(3) Special rule for certain original targets described in section 338(h)(6)(B)(i).
(i) General rule.
(ii) Transitional excludible original target.
(iii) Qualifying target affiliate.
(A) General rule.
(B) Excepted target.
(iv) Coordination with protective carryover election.
(4) Examples.
(5) Relationship between transitional exclusion election and regular exclusion election.
(i) In general.
(ii) Special rule for application of regular exclusion election.
(iii) Limitation on application of paragraph (c)(3) of this section.
(iv) Limitation on application of paragraph (c)(4) of this section.
(v) Overlap between paragraphs (c)(2)(iv) and (j)(3) of this section.
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(iv) Acquisition date of transitional target affiliate or eligible target occurs after transitional section 338(h)(6)(B) statement filed.
(v) Contents of transitional section 338(h)(6)(B) statement.

(3) *Application of § 1.338–4T to foreign persons and certain domestic corporations.* Except as otherwise provided in this section, the provisions of § 1.338–4T apply to—
(i) Foreign corporations.
(ii) Domestic corporations described in section 338(h)(6)(B), and
(iii) Individuals that are not U.S. residents or citizens.
(4) *Procedural rules.* For additional procedural rules, see § 1.338–1T.
(b) *Nomenclature and definitions*—(1) *Nomenclature.* The nomenclature in § 1.338–4T(b)(1) also applies to this section except as follows:
(i) *Corporations.* Each term used in § 1.338–4T(b)(1) to refer to a corporation (*e.g.*, "T") is preceded in this section either by the letter "D," connoting a domestic corporation, the letter "F," connoting a foreign corporation (as defined in section 7701(a)(5)), or the letters "CFC," connoting a controlled foreign corporation (as defined in section 957). ("CFC" is used rather than "F" only when the corporation's status as a controlled foreign corporation is significant.) However, the term "P" is used without a prefix when the purchasing corporation's status as a foreign or domestic corporation is not significant. (All terms used in § 1.338–4T to refer to corporations are references to domestic corporations.)
(ii) *Individuals.* Each term used in § 1.338–4T(b)(1) to refer to an individual (*i.e.*, "A" and "B") is preceded in this section either by the letter "D," connoting a U.S. resident or citizen, or "F," connoting an individual other than a U.S. resident or citizen. (All terms used in § 1.338–4T to refer to individuals are references to U.S. residents or citizens.)
(2) *Definitions.* The definitions in § 1.338–4T also apply to this section, except that the definition of a domestic corporation in § 1.338–4T(b)(6) is applied without the exclusion therein for DISCs, corporations described in section 934(b) or 1248(e), and corporations to which and election under section 936 applies.
(c) *Application of section 338 to corporations and stock described in section 338(h)(6)(B)*—(1) *General rule.* Except as otherwise provided in this paragraph (c) and in paragraph (j) of this section (relating to transitional rules)—
(i) A corporation that would be a target affiliate within the meaning of section 338(h)(6)(A) but for section 338 (h)(6)(B)(i) shall be considered a target affiliate for all purposes of section 338 and
(ii) Stock held by a target affiliate in a foreign corporation or in a domestic corporation that is a DISC or that is described in section 1248(e) shall not be excluded from the operation of section 338.
(2) *Elective exclusion of foreign corporations from target affiliate status*—(i) *General rule.* If P files an express election for DT, an original target, then, solely for purposes of the stock consistency rule of section 338(f)(1), P also may elect (in the manner prescribed in paragraph (c)(2)(v) of this section) to exclude all excludible foreign target affiliates from the status of target affiliate ("regular exclusion election"). If the regular exclusion election is not or cannot be made (*e.g.*, because DT is FT or because a section 338 election is not filed for DT), then none of the excludible foreign target affiliates may be excluded from the status of a target affiliate. A section 338 election cannot be made for any excludible foreign target affiliate that is subject to a regular exclusion election. For a special stock basis rule that applies when a regular exclusion election is made, see paragraph (c)(3) of this section. For a special asset consistency rule that applies when a regular exclusion election is made, see paragraph (c)(4) of this section. For treatment of certain foreign corporations as domestic corporations, see paragraph (c)(5) of this section. For transitional rules, see paragraph (j) of this section.
(ii) *Excludible foreign target affiliate.* An "excludible foreign target affiliate" is a foreign corporation that meets two conditions. The first condition is that, absent section 338(h)(6)(B), it would be subject to a deemed election under section 338(f)(1) by reason of the express election for DT. The second condition is that it must not be a transitional target affiliate within the meaning of paragraph (j)(2) of this section, *i.e.*, its acquisition date must not occur on or before March 15, 1986 (or after March 15, 1986, but pursuant to a binding contract in effect on February 19, 1986. See Examples (1) and (2) in paragraph (c)(6) of this section.
(iii) *Regular exclusion election not available in certain cases*—(A) *General rule.* Except as provided in paragraph (c)(2)(iii)(D) of this section (relating to effect of statute of limitations), a regular exclusion election cannot be made (or is retroactively invalidated) if an invalidation event described in this subdivision (iii) occurs and is not disregarded by the District Director. An invalidation event shall be disregarded only if the District Director determines, in connection with the examination of a return that would be affected by the invalidation event, that (*1*) a principal purpose for the transaction that constitutes the invalidation event is avoidance of the regular exclusion election and (*2*) the principles underlying his subdivision (iii) would not be significantly compromised by disregarding the invalidation event. The invalidation event shall be given full effect pursuant to the provisions of this subdivision (iii) unless and until these determinations are made by the District Director.
(B) *Controlled foreign corporation directly acquired.* An invalidation event occurs if, during the consistency period, P (or any other member of the P group) directly acquires (other than by reason of a deemed purchase under section 338(a)(2)) any stock in (*1*) an excludible foreign target affiliate that was a controlled foreign corporation at any time during so much of that excludible foreign target affiliate's taxable year within which its acquisition date occurs (or would occur if a valid regular exclusion election were not made in the express election) as ends on that acquisition date or (*2*) a domestic target described in section 1248(e) that is subject to a section 338 election and that holds stock in an excludible foreign target affiliate described in (*1*) of this

subdivision (B). For purposes of determining whether the excludible foreign target affiliate is a controlled foreign corporation during the relevant period, the special rule of paragraph (g)(2)(iv) of this section applies. For purposes of determining whether P directly acquires any stock, the special deemed stock sale rule of paragraph (g)(2)(vi) of this section applies. See Examples (3), (5), and (8) in paragraph (c)(6) of this section.

(C) *Excludible foreign target affiliate holds stock in domestic corporation.* An invalidation event occurs if one or more excludible foreign target affiliates hold stock in a domestic corporation and that domestic corporation would be subject to a section 338 election only if the regular exclusion election did not apply. See Examples (9) through (13) in paragraph (c)(6) of this section.

(D) *Exception when statute of limitations has expired.* If a regular exclusion election is retroactively invalidated by reason of a subsequent invalidation event, and if, as of the day of the invalidation event, the period within which to make an assessment of tax has expired for any return (of any person) that would be affected by treating a particular excludible foreign target affiliate as not subject to the previously made regular exclusion election ("barred target"), then, notwithstanding the invalidation event, the barred target will continue to be treated as subject to a regular exclusion election. Because of the invalidation event, however, excludible foreign target affiliates (other than barred targets) will not be treated as subject to a regular exclusion election. For purposes of this subdivision (D), a return would be affected by treating an excludible foreign target affiliate as not subject to a previously made regular exclusion election if such treatment would have the effect, directly or indirectly, of increasing the tax liability reported in that return.

(iv) *Special rule if original target is a foreign corporation*—(A) *General rule.* This subdivision (iv) applies if the original target is a foreign corporation other than a transitional excludible original target within the meaning of paragraph (j)(3)(ii) of this section, *i.e.*, other than an original target with an acquisition date that occurs on or before March 15, 1986 (or after March 15, 1986, but pursuant to a binding contract in effect on February 19, 1986. If, subsequent to its qualified stock purchase of the stock of such a foreign original target, P (or another member of the P group) makes a qualified stock purchase of the stock of a qualifying domestic target affiliate, then an express election may be made for the qualifying domestic target affiliate as if it were the original target, provided that a regular exclusion election is made in that express election. If the express election and regular exclusion election are made, then the foreign original target and all other foreign corporations that would have been subject to a deemed election under section 338(f)(1) by reason of an express election for that foreign original target will be treated as excludible foreign target affiliates subject to a regular exclusion election. Caution should be exercised when applying this subdivision (iv), since a subsequently acquired domestic target affiliate will not be considered a qualifying domestic target affiliate under paragraph (c)(2)(iv)(C) of this section if, under the hypothetical circumstances described therein, an invalidation event occurs before an express election for that domestic target affiliate (as a deemed original target) is filed. In such a case, the express election may be made only for the foreign original target. If the time to make that express election has expired, then, by reason of section 338(f)(2), the subsequently acquired domestic target affiliate cannot be made subject to section 338. If, by contrast, the invalidation event occurs *after* the express election is filed for the subsequently acquired domestic target affiliate, then that express election will be valid but the otherwise excluded foreign targets also will be subject to that express election. See paragraph (c)(2)(iv)(E) of this section. See also examples (7), (8), and (13) in paragraph (c)(6) of this section. For a similar rule applicable to a trasitional excludible original target, see paragraph (j)(3) of this section. For rules governing cases in which the provisions of this subdivision (iv) and paragraph (j)(3) of this section overlap, see paragraph (j)(5)(v) of this section.

(B) *Foreign target as original target.* Pursuant to the definition in § 1.338–4T(b)(4), a foreign target is an original target if there exists no previously acquired target as to which a section 338 election would cause a deemed election under section 338(f)(1) for the foreign target. For purposes of applying this definition, the section 338 election referred to therein should be considered one with respect to which a regular exclusion election is not made.

(C) *Qualifying domestic target affiliate.* A domestic target is a "qualifying domestic target affiliate" if four conditions are satisfied. The first condition is that the domestic target must be a corporation that would have been subject to a deemed election under section 338(f)(1) had an express election been made for the foreign original target. The second condition is that the qualified stock purchase of the domestic target's stock must not occur by reason of a deemed purchase under section 338(a)(2). The third condition is that a regular exclusion election could have been made in an express election filed for that domesic target had it been the original target, had the foreign original target been a target affiliate of that domestic target, and had the acquisition date of the foreign original target occurred during the consistency period of that domestic target. For purposes of the third condition, an invalidation event occurring after the express election is filed is disregarded. The fourth condition is that there must be no other domestic target that satisfies the first three conditions and that has an earlier acquisition date. If two or more domestic corporations with the same acquisition date satisfy the first three conditions, then P may select any one of them to be the qualifying domestic target affiliate. The selection is made by filing an express election that names one such domestic corporation as the original target. See Examples (7), (8), and (13) in paragraph (c)(6) of this section.

(D) *Special rule inapplicable if express election for original foreign target filed.* An express election for a qualifying domestic target affiliate cannot be made if an express election already has been made for the original foreign target.

(E) *Effect of invalidation event.* If an invalidation event occurs after the express election and regular exclusion election are filed, then, subject to the barred target rule of paragraph (c)(2)(iii)(D) of this section, the original foreign target will be treated as subject to a deemed election under section 338(f)(1) by reason of the express election and no corporation will be excluded from the status of a target affiliate pursuant to the previously filed regular exclusion election.

(F) *Coordination with protective carryover election.* If P wishes to make a protective carryover election under § 1.338–4T(f)(6) in lieu of an express election and if an express election could have been made for a target other than the actual original target pursuant to this subdivision (iv) or paragraph (j)(3) of this section, then the protective carryover election need not be filed before the close of the period within which an express election could have been made for a target other than the original target. For all purposes of the

protective carryover election other than the time for filing that election, the actual original target is treated as the original target (*e.g.*, for purposes of identifying the original target in the protective carryover election statement).

(v) *Procedure for making regular exclusion election*—(A) *General rule.* The regular exclusion election is made on the Form 8023 filed for DT in the manner shown on the form. If the revised Form 8023 showing the manner for making this election is not available, a statement ("regular exclusion statement") must be attached to the Form 8023. The regular exclusion election, once made, is treated as an integral part of the Form 8023, *e.g.*, for purposes of § 1.338–1T(e)(2)(i) (requiring that the Form 8023 be attached to certain returns). The regular exclusion election is irrevocable.

(B) *Contents of regular exclusion statement.* The regular exclusion statement must be identified prominently as a regular exclusion election under § 1.338–5T(c)(2) and must contain the following declaration (or a substantially similar declaration): "THE REGULAR EXCLUSION ELECTION IS HEREBY MADE FOR ALL EXCLUDIBLE FOREIGN TARGET AFFILIATES (AS DEFINED IN § 1.338–5T(c)(2) (ii) and (iv))." The regular exclusion statement must be signed (in the manner prescribed in § 1.338–1T(d)(1)(v)) by a person authorized to act on behalf of P.

(C) *Transitional rule.* If a regular exclusion election is not made in an express election filed on or before March 15, 1986, a regular exclusion election nonetheless may be made if, on or before March 15, 1986, a copy of the previously filed express election (generally Form 8023), with a copy of the regular exclusion statement attached, is filed with the Internal Revenue Service Center(s) with which the express election is required to be filed under § 1.338–1T (c) and (d).

(vi) *Annotation on required schedule.* For additional information that must be included on the schedule required by § 1.338–1T(e) if a regular exclusion election is made, see § 1.338–1T(e)(1)(i)(F).

(vii) *Procedure if regular exclusion election invalidated subsequent to filing*—(A) *Required schedule must be amended.* If, subsequent to the making of a regular exclusion election, that exclusion election is invalidated by reason of an invalidation event described in paragraph (c)(2)(iii) of this section, then the schedule required by § 1.338–1T(e) must be amended pursuant to § 1.338–1T (e)(1)(ii)(B) and (e)(2)(ii)(B). See Examples (3) and (11) in paragraph (c)(6) of this section.

(B) *Filing of amended returns.* If any returns of P group members (determined as of the day of the invalidation event) need to be amended as a result of an invalidation event, then the penalty prescribed in § 1.338–1T(e)(3)(i) (inapplicability of the waiver rule of § 1.338–1T(h)) applies unless appropriate amended returns (with a copy of the previously filed Form 8023 and the revised schedule attached) are filed on or before the 120th day after the date of the invalidation event.

(3) *Effect of regular exclusion election on basis in excludible foreign target affiliate stock*—(i) *General rule.* If a domestic target (*i.e.*, DT or a domestic affected target) is subject to section 1248(f)((1) on its deemed sale under section 338(a)(1) of stock in an excludible foreign target affiliate to which a regular exclusion election applies ("EFTA stock"), then the basis of that EFTA stock in the hands of that domestic target, as new domestic target, shall be the lesser of—

(A) The basis amount that, absent this subparagraph (3), is allocable to that EFTA stock under section 338(b) ("regular basis amount") or

(B) Old domestic target's basis in that EFTA stock immediately before its deemed sale of assets under section 338(a)(1), increased by the dividend (if any) included in old domestic target's gross income under section 1248(f)(1) as a result of its deemed sale of that EFTA stock ("special basis amount").

(ii) *Excess basis amount eliminated.* If new domestic target's basis in EFTA stock is determined under this subparagraph (3), then the excess (if any) of the regular basis amount over the special basis amount is eliminated. For purposes of allocating new domestic target's adjusted grossed-up basis among the other assets of new domestic target, however, such excess is treated as if it were an amount allocated to the EFTA stock.

(iii) *Subject to section 1248(f)(1).* A domestic target is considered "subject to section 1248(f)(1)" on its deemed sale of EFTA stock if all of the following three requirements are satisfied:

(A) That target recognizes a section 1248(f) dividend as a result of such deemed sale (or would have recognized such a dividend if the excludible foreign target affiliate had earnings and profits).

(B) The section 1248(f) dividend (if any) actually recognized by that target is less than the gain it is deemed to realize on such deemed sale.

(C) If earnings and profits hypothetically would arise had the regular exclusion election not been made (whether or not they would actually arise), they would increase the section 1248(f) dividend recognized by that target on its deemed sale of that EFTA stock.

(iv) *Special rules if foreign target treated as domestic.* This subdivision (iv) applies if three conditions are satisfied. The first condition is that a domestic target (*i.e.*, DT or a domestic affected target) must be subject to section 1248(f)(1) on its deemed sale under section 338(a)(1) of stock in a foreign target that is treated as a domestic target under paragraph (c)(5) of this section (an "FDT"). (A domestic corporation described in section 1248(e) is considered an FDT for purposes of this subdivision (iv).) For purposes of applying the definition of paragraph (c)(3)(iii) of this section, stock in an FDT is considered EFTA stock. The second condition is that such FDT ("FDT1") must, at the close if its aquisition date, directly or indirectly (through one or more other FDTs ("intermediate FDTs")) hold EFTA stock. The third condition is that, if deemed sale earnings and profits of the excludible foreign target affiliate hypothetically would arise had the regular exclusion election not been made, they would increase the section 1248(f) dividend recognized by the domestic target on its deemed sale of FDT1 stock. If the three conditions are satisfied, then the following consequences apply:

(A) The basis of the domestic target, as new domestic target, in FDT1 stock shall be determined under paragraph (c)(3)(i) of this section as if FDT1 were an excludible foreign target affiliate.

(B) The basis of FDT1, as new FDT1, in directly held EFTA stock shall be the lesser of the following two amounts: The first amount is the regular basis amount (within the meaning of paragraph (c)(3)(i)(A) of this section). The second amount is the basis of old FDT1 in the EFTA stock, increased by an amount equal to the excess of the section 1248(f) dividend (if any) actually recognized by the domestic target on its deemed sale of FDT1 stock over the amount that dividend would have been had (*1*) FDT1 not held the stock of EFTA and (*2*) the gain realized on the deemed sale of the FDT1 stock were not affected by (*1*) of this subdivision (B).

(C) The basis of FDT1 in the stock of an intermediate FDT, and the basis of each intermediate FDT in the stock of another intermediate FDT or in EFTA stock, shall be determined in the same manner as under paragraph (c)(3)(iv)(B) of this section.

(v) *Cross-reference.* For nonapplication of this subparagraph (3) during a transitional period, see paragraph (j)(5)(iii) of this section. For

examples of this subparagraph (3), see Examples (15) through (18) in paragraph (c)(6) of this section.

(4) *Special asset consistency rule if regular exclusion election made*—(i) *General rule.* A P group member must take a carryover basis in an asset acquired from an excludible foreign target affiliate or from a foreign target affiliate of a relevant target as if the asset acquisition were subject to an affirmative action carryover election if (A) a regular exclusion election is made and (B) in the absence of an express election, the asset acquisition would be considered a tainted asset acquisition (as defined in § 1.338–4T(f)(6)(ii)) with respect to any relevant target. See Examples (19) through (21) in paragraph (c)(6) of this section. For guidance on the affirmative action carryover election, see § 1.338–4T(f)(6). For a limitation on the rule of this subparagraph (4) in the transitional context, see paragraph (j)(5)(iv) of this section. Except as provided in this subparagraph (4) or in paragraph (j)(6)(iii) of this section (relating to a transitional rule), no asset acquisition shall be treated as a tainted asset acquisition if an express election is made.

(ii) *Deemed election not imposed.* In no event shall the District Director impose a deemed election under section 338(e)(1) for any excludible foreign target affiliate as a result of an asset acquisition described in this subparagraph (4).

(iii) *Relevant target.* A "relevant target" is the actual original target (and not a target deemed to be the original target in the express election actually filed) or any other corporation that, absent section 338(h)(6)(B), would be subject to a deemed election under section 338(f)(1) by reason of an express election for that original target.

(5) *Certain foreign corporations treated as domestic corporations*—(i) *General rule.* A foreign original target is treated as a domestic corporation for purposes of this paragraph (c) if 50 percent or more of its gross income from all sources for the 3-year period ending with the close of its taxable year that precedes its event year (or for so much of that 3-year period as that foreign corporation has been in existence) is effectively connected with the conduct by that corporation of a trade or business in the United States. This 50 percent gross income test also applies to a foreign corporation that otherwise would be an excludible foreign target affiliate (including by reason of the treatment of a foreign original target as a domestic original target pursuant to the preceding sentence). The 50 percent test of this subdivision (i) shall be applied in the same manner as the 50 percent test of section 861(a)(2)(B) (relating to source of certain dividends) except that the Commissioner may exclude any transactions of a foreign corporation during the last year of this 3-year period from gross income for purposes of this 50 percent test if he determines (on the basis of all the facts and circumstances) that the transactions were entered into pursuant to a plan to treat or avoid treating a foreign corporation as a domestic corporation. See Examples (4), (6), and (9) through (13) in paragraph (c)(6) of this section.

(ii) *Event year.* The "event year" of a foreign corporation is the taxable year of that corporation in which its acquisition date occurs (or would occur, absent a regular exclusion election, in the event of an express election for the original target).

(iii) *Exception.* If, during the consistency period, P (or any other member of the P group) directly acquires (other than by reason of a deemed purchase under section 338(a)(2)) any stock in a foreign target (including a foreign corporation that would be a target only if a regular exclusion election were not made in the express election), then that foreign target will in no case be treated as a domestic corporation if (A) it was a controlled foreign corporation at any time during so much of the taxable year within which its acquisition date occurs (or would occur if a regular exclusion election were not made in the express election) as ends on that acquisition date and (B) it holds stock in a corporation that would be an excludible foreign target affiliate if the foreign corporation were treated as a domestic corporation. For purposes of determining whether the corporation is a controlled foreign corporation during the relevant period, the special rule of paragraph (g)(2)(iv) of this section applies. See Examples (4) through (6) and (18) in paragraph (c)(6) of this section.

(6) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples. In each example, assume unless otherwise expressly indicated that all of the corporations are calendar year corporations and that none of the foreign corporations are treated as domestic corporations under paragraph (c)(5) of this section. Assume also that DS (or FS) has held all of the stock of the corporations it sells to P since those corporations were organized. Finally, assume that none of the invalidation events described in the following examples are subsequently disregarded pursuant to paragraph (c)(2)(iii)(A) of this section.

Example (1). On July 31, 1986, P purchases from DS all of the stock of DT in a qualified stock purchase. DT holds all of the stock of FT1, FT1 holds all of the stock of FT2, and FT2 holds all of the stock of FT3. Because a section 338 election for DT would cause deemed elections under section 338(f)(1) for FT1, FT2, and FT3 in the absence of section 338(h)(6)(B), those foreign corporations are excludible foreign target affiliates under paragraph (c)(2)(ii) of this section. If P makes a regular exclusion election in an express election filed for DT, then that express election will not cause deemed elections under section 338(f)(1) for FT1, FT2, and FT3, since those corporations will not be considered target affiliates for purposes of the stock consistency rule of section 338(f)(1).

Example (2). Assume the same facts as in Example (1). Assume in addition that on August 31, 1986, P also purchases from DS all of the stock of DT4, a domestic corporation, in a qualified stock purchase. DT4 holds all of the stock of FT5. Because a section 338 election for DT would cause a deemed election under section 338(f)(1) for FT5 in the absence of section 338(h)(6)(B), FT5 is an excludible foreign target affiliate under paragraph (c)(2)(ii) of this section. If P makes a regular exclusion election in an express election filed for DT, then that express election will cause a deemed election under section 338(f)(1) for DT4 but not for FT1, FT2, FT3, and FT5. If a regular exclusion election is *not* made in the express election filed for DT, then that express election will cause deemed elections for FT1, FT2, FT3, and FT5, as well as for DT4.

Example (3). Assume the same facts as in Example (2), except that DT4 is FT4, a foreign corporation. Because a section 338 election for DT would cause a deemed election under section 338(f)(1) for FT4 in the absence of a regular exclusion election, FT4 is an excludible foreign target affiliate under paragraph (c)(2)(ii) of this section. Because DS is a domestic corporation, FT4 was a controlled foreign corporation during the period beginning on January 1, 1986, and ending on August 31, 1986. Accordingly, that acquisition is an invalidation event and a valid regular exclusion election cannot be made in an express election filed for DT. See paragraph (c)(2)(iii)(B) of this section. (If a Form 8023 purporting to make a regular exclusion election already has been filed, then that regular exclusion election is retroactively invalidated by the qualified stock purchase of FT4 and the procedures described in paragraph (c)(2)(vii) of this section apply.)

Example (4). (i) Assume the same facts an in Example (3), except that FT4 satisfies the 50 percent gross income test of paragraph (c)(5)(i) of this section for the 3-year period preceding 1986. None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) FT4 is not treated as a domestic corporation even though the 50 percent gross income test is satisfied, however, since the exception of paragraph (c)(5)(iii) of this section applies, *i.e.*, FT4 was directly acquired by P (other than by reason of a deemed purchase under section 338(a)(2)).

FT4 was a controlled foreign corporation during the period beginning on January 1, 1986, and ending on August 31, 1986, and FT4 holds the stock of a corporation, FT5, that would be an excludible foreign target affiliate if FT4 were treated as a domestic corporation. Accordingly, the result is the same as in Example (3).

Example (5). Assume the same facts as in Example (3), except that DS is FS. FS is not a controlled foreign corporation. Under these facts, FT4 is not a controlled foreign corporation at any time during the period beginning on January 1, 1986, and ending on August 31, 1986. Because the acquisition of FT4 therefore is not described in paragraph (c)(2)(iii)(B) of this section, P may make a regular exclusion election in an express election filed for DT, and that regular exclusion election will apply to FT1, FT2, FT3, FT4, and FT5.

Example (6). (i) Assume the same facts as in Example (1), except that DT is FT. FT satisfies the 50 percent gross income test of paragraph (c)(5)(i) of this section for the 3-year period preceding 1986. None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) A regular exclusion election cannot be made in an express election filed for FT, since FT is not a domestic original target. See paragraph (c)(2)(i) of this section. FT cannot satisfy the requirements for domestic corporation status under paragraph (c)(5) of this section, since the exception of paragraph (c)(5)(iii) of this section applies, *i.e.*, FT was directly acquired by P (other than by reason of a deemed purchase under section 338(a)(2)). FT was a controlled foreign corporation during the period beginning on January 1, 1986, and ending on July 31, 1986, and FT holds the stock of a corporation, FT1, that would be an excludible foreign target affiliate if FT were treated as a domestic corporation. Because a regular exclusion election cannot be made in an express election for FT, such an express election will cause deemed elections under section 338(f)(1) for FT1, FT2, and FT3.

Example (7). (i) Assume the same facts as in Example (6). Assume in addition that on August 31, 1986, P also purchases the stock of DT4 from DS in a qualified stock purchase. DT4 holds all of the stock of FT5.

(ii) Because a regular exclusion election cannot be made in an express election for FT, such an express election will cause deemed elections under section 338(f)(1) for DT4 and FT5 as well as for FT1, FT2, and FT3.

(iii) An express election cannot be made for DT4 under paragraph (c)(2)(iv) of this section because DT4 is not a qualifying domestic target affiliate within the meaning of paragraph (c)(2)(iv)(C) of this section. DT4 is not a qualifying domestic target affiliate within the meaning of paragraph (c)(2)(iv)(C) of this section because a regular exclusion election could not have been made in an express election for DT4 had DT4 been the original target, had FT been a target affiliate of DT4, and had the acquisition date of FT occurred during the consistency period of DT4. (Under those hypothetical circumstances, P's direct acquisition of FT from DS is an invalidation event under paragraph (c)(2)(iii)(B) of this section, since FT is a controlled foreign corporation during the relevant period.)

Example (8). (i) Assume the same facts as in Example (6), except that DS is FS. FS is not a controlled foreign corporation. Assume in addition that on August 31, 1986, P also purchases the stock of DT4 from FS in a qualified stock purchase. DT4 holds all of the stock of FT5.

(ii) FT is an original foreign target within the meaning of paragraph (c)(2)(iv)(B) of this section. In addition, DT4 is a qualifying domestic target affiliate within the meaning of paragraph (c)(2)(iv)(C) of the section. DT4 is a qualifying domestic target affiliate because it would be subject to a deemed election under section 338(f)(1) if an express election were made for FT and because a regular exclusion election could have been made in an express election for DT4 had DT4 been the original target, had FT been a target affiliate of DT4, and had the acquisition date of FT occurred during the consistency period of DT4. (Under those hypothetical circumstances, P's direct acquisition of FT is not an invalidation event under paragraph (c)(2)(iii)(B) of this section, since FT is not a controlled foreign corporation during the relevant period.) Accordingly, the special rule of paragraph (c)(2)(iv) of this section applies and an express election may be made for DT4 rather than for FT, provided that a regular exclusion election is made in that express election. If such an express election is made, FT, FT1, FT2, FT3, and FT5 will be treated as excludible target affiliates subject to that regular exclusion election.

Example (9). (i) Assume the same facts as in Example (1), except that FT2 satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 and therefore is treated as a domestic corporation for purposes of this paragraph (c). (1986 is the taxable year of FT 2 in which its acquisition date would occur, absent a regular exclusion election, in the event of an express election for DT. See paragraph (c)(5)(ii) of this section.) (The exception of paragraph (c)(5)(iii) of this section is inapplicable because P did not directly acquire any of the stock of FT2.) None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) A valid regular exclusion election cannot be made in an express election filed for DT, since an excludible foreign target affiliate, FT1, holds stock in a "domestic" corporation, FT2, that would be subject to a section 338 election only if the regular exclusion election did not apply. See paragraph (c)(2)(iii)(C) of this section.

Example (10). (i) Assume the same facts as in Example (1), except that both FT1 and FT2 satisfy the 50 percent gross income test of paragraph (c)(5) of this section and therefore are treated as domestic corporations for purposes of this paragraph (c). None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) A regular exclusion election (applicable to FT3 only) may be made in the express election filed for DT, since both FT1 and FT2 are considered domestic corporations under paragraph (c)(5) of this section (and therefore are no excludible foreign target affiliates). Accordingly, there exists no excludible foreign target affiliate that holds stock in a domestic corporation.

Example (11). (i) Assume the same facts as in Example (2), except that FT5 holds all of the stock of FT6 and that FT6 satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 (and therefore is treated as a domestic corporation for purposes of this paragraph (c)). None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) Since an excludible foreign target affiliate, FT5, holds stock in a "domestic" corporation, FT6, that would be subject to a section 338 election only if the regular exclusion election did not apply, the acquisition of DT4 is an invalidation event and a valid regular exclusion election cannot be made in the express election filed for DT4. See paragraph (c)(2)(iii)(C) of this section. (If a Form 8023 purporting to make a regular exclusion election already has been filed, then that regular exclusion election is retroactively invalidated by the acquisition of DT4 and the procedures described in paragraph (c)(2)(vii) of this section apply.)

Example (12). Assume the same facts as in Example (9), except that FT1 holds only 10 percent of FT2's only class of outstanding stock while a wholly-owned domestic subsidiary of DT holds the remaining 90 percent. A regular exclusion election (applicable to FT1 and FT3) may be made in the section 338 election filed for DT, since FT2, a "domestic" corporation, will be subject to a section 338 election even though the regular exclusion election is made. See paragraph (c)(2)(iii)(C) of this section.

Example (13). (i) Assume the same facts as in Example (8), except that FT2 satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 and therefore is treated as a domestic corporation for purposes of this paragraph (c). None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) An express election cannot be made for DT4 under the special rule of paragraph (c)(2)(iv) of this section, since a regular exclusion election could not have been made in an express election for DT4 had DT4 been the original target, had FT been a target affiliate of DT4, and had the acquisition date of FT occurred during the consistency period of DT4. Although P's direct acquisition of FT is not an invalidation event under those hypothetical circumstances, since FT is not a controlled foreign corporation for the relevant period, an invalidation event nonetheless occurs because FT1, an excludible foreign target affiliate, holds stock in a "domestic" corporation, FT2. See paragraph (c)(2)(iii)(C) of this section.

(iii) Because the invalidation event occurs before an express election for DT4 could be filed, DT4 is not a qualifying domestic target affiliate within the meaning of paragraph (c)(2)(iv)(C) of this section. Accordingly, the express election can be made only for FT, and a regular exclusion election cannot be made in that express election.

Example (14). Assume that P makes a regular exclusion election under the facts described in Example (2). Notwithstanding

that, by reason of section 338(h)(3)(B), new DT and new DT4 are considered to have made qualified stock purchases of FT1 and FT5, respectively, a separate section 338 election cannot be made for either or both of those corporations. See paragraph (c)(2)(i) of this section.

Example (15). (i) Assume that P makes a regular exclusion election under the facts described in Example (1). Assume in addition that old DT4s basis in FT1 stock immediately before old DT's deemed sale of assets is $20,000, that old DT realizes gain of $80,000 on the deemed sale of FT1 stock (at a deemed sale price of $100,000), and that old DTD must include $55,000 in gross income as a dividend under section 1248(f)(1) as a result of that deemed sale. (That $55,000 does not include a $10,000 dividend under section 78.) Finally, assume that new DT's basis in FT1 absent this paragraph (c) would be $100,000.

(ii) The special stock basis rule of paragraph (c)(3)(i) of this section applies. Old DT is subject to section 1248(f)(1) (within the meaning of paragraph (c)(3)(iii) of this section) on its deemed sale of FT1 stock because (A) DT recognizes a section 1248(f) dividend on that deemed sale, (B) that dividend is less than the gain realized by DT in that deemed sale, and (C) earnings and profits that would have arisen had the regular exclusion election not been made would have increased the section 1248(f) dividend recognized by old DT. (Any earnings and profits that would have accured to FT1, FT2, or FT3 had section 338 applied to those foreign corporations would have increased old DT's section 1248 (f) dividend since each of those corporations is a controlled foreign corporation for the taxable year within which such earnings and profits would have been triggered. See paragraph (g) of this section.)

(iii) New DT's basis in FT1 stock is $75,000, the lesser of the regular basis amount of $100,000 or the special basis amount of $75,000, *i.e.*, $20,000+$55,000. See paragraph (c)(3)(i) of this sectdion. The $25,000 excess of the regular basis amount over the special basis amount is eliminated for income tax purposes except that, in allocating basis among the other assets of new DT, that $25,000 excess is treated as if it were an amount allocated to the FT1 stock. See paragraph (c)(3)(ii) of this section.

Example (16). (i) Assume the same facts as in Example (15), except that FT1 satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 and therefore is treated as a domestic corporation for purposes of this paragraph (c). None of the other foreign corporations satisfy the 50 percent gross income test. Thus, DT and FT1 are subject to elections under section 338 while FT2 and FT3 are excludible foreign target affiliates subject to the regular exclusion election. Assume further the following: Old DT's section 1248(f)(1) dividend increases from $55,000 to $60,000 as a result of the deemed sale earnings and profits triggered by FT1's deemed sale of assets. Old FT1's basis in FT2 stock is $10,000. Absent paragraph (c)(3) of this section, new FT1's basis in FT2 stock would be $90,000. The earnings and profits of FT2 and FT3 that are attributable to the FT1 stock under section 1248(c)(2) are $15,000 and $20,000, respectively.

(ii) Under these circumstances, the special basis rule of paragraph (c)(3)(iv) of this section applies. Accordingly, DT's basis in FT1 stock is determined under paragraph (c)(3) (i) and (iv)(A) of this section even though FT1 is not an excludible foreign target affiliate. Thus, new DT's basis in FT1 is $80,000 (*i.e.*, $20,000+$60,000), an amount less than the regular basis amount of $100,000. In addition, new FT1's basis in FT2 stock is the lesser of (A) the regular basis amount of $90,000 or (B) old FT1's $10,000 basis in the FT2 stock, increased by $35,000, *i.e.*, the excess of the section 1248(f) dividend actually recognized by DT, $60,000, over the amount that dividend would have been had FT1 not held the FT2 stock, $25,000 (*i.e.*, $60,000—($15,000+$20,000)). (Had FT1 not held the FT2 stock, the earnings and profits of both FT2 and FT3 would have been disregarded for purposes of calculating the amount of DT's section 1248 (f) dividend.)

Example (17). (i) Assume the same facts as in Example (16), except that FT2 also satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 and therefore is treated as a domestic corporation for purposes of this paragraph (c). FT3 does not satisfy the 50 percent gross income test. Thus, DT, FT1, and FT2 are subject to elections under section 338 while FT3 is an excludible foreign target affiliate subject to the regular exclusion election. Assume further that, as a result of FT2's deemed sale of assets, its earnings and profits that are attributable to the FT1 stock under section 1248(c)(2) increase by $2,000, *i.e.*, from $15,000 to $17,000. (FT3's attributable earnings and profits are the same as in Example (16).) Thus, old DT's section 1248(f)(1) dividend increases from $60,000 to $62,000. Finally, assume that old FT2's basis in FT3 stock is $5,000, and that, absent paragraph (c)(3) of this section, new FT2's basis in FT3 stock would be $30,000.

(ii) New DT's basis in FT1 stock is determined in the same manner as in Example (16). Thus, new DT basis in FT1's is $82,000 (*i.e.*, $20,000+$62,000), an amount less than the regular basis amount of $100,000.

(iii) New FT1's basis in FT2 stock is the lesser of (A) the regular basis amount of $90,000 or (B) old FT1's $10,000 basis in the FT2 stock, increased $37,000, *i.e.*, the excess of the section 1248(f) dividend actually recognized by DT, $62,000, over the amount that dividend would have been had FT1 not held the FT2 stock, $25,000 (*i.e.* $62,000—($17,000+$20,000)).

(iv) New FT2's basis in FT3 stock is the lesser of (A) the regular basis amount of $30,000 or (B) old FT2's $5,000 basis in the FT3 stock, increased by $20,000, *i.e.*, the excess of the section 1248(f) dividend actually recognized by DT ($62,000) over the amount that dividend would have been FT2 not held the FT3 stock, $42,000 *i.e.*, $62,000–$20,000).

Example (18). (i) Assume the same facts as in Example (16), except that DT holds only 80 of the 100 outstanding shares of FT1's only class of stock and that on July 31, 1986, P purchases the remaining 20 shares of FT1 stock from DS.

(ii) FT1 cannot be treated as a domestic corporation since the exception of paragraph (c)(5)(iii) of this section applies, *i.e.*, 20 shares of FT1 stock were directly acquired by P (other than by reason of a deemed purchase under section 338(a)(2)). FT1 was a controlled foreign corporation for the relevant period, and FT1 holds the stock of a corporation, FT2, that would be an excludible foreign target affiliate if FT1 were treated as a domestic corporation. Thus, FT1 also is an excludible foreign target affiliate and P's direct acquisition of its stock is an invalidation event under paragraph (c)(2)(iii)(B) of this section. Accordingly, a valid regular exclusion election cannot be made in an express election for DT, and such an express election will cause deemed elections for FT1, FT2, and FT3.

Example (19). Assume that P makes a regular exclusion election under the facts described in Example (2). Assume in addition that on September 10, 1986, P purchases an asset from FT1 in an acquisition that, absent an express election for DT, would be considered a tainted asset acquisition (as defined in § 1.338–4T(f)(6)(i)). Under paragraph (c)(4) of this section, P is required to take a carryover basis in the acquired asset as if the acquisition were subject to an affirmative action carryover election. The result is the same if the asset is acquired by DT, FT2, FT3, DT4, of FT5.

Example (20). Assume the same facts as in Example (19), except that DS is FS, a foreign corporation, and that P purchases the asset from FS. The result is the same as in Example (19).

Example (21). Assume the same facts as in Example (19), except that P purchases the asset from DT. Because paragraph (c)(4) of this section does not apply to asset acquisitions from targets that are subject to the express election, P's basis in the asset is determined under section 1012. The result is the same if P acquires the asset from DT4.

(d) *Special rules applicable to offset prohibition election*—(1) *Offset prohibition election inapplicable to certain transfers*—(i) *General rule.* The consequences of an offset prohibition election under § 1.338–4T(f)(6)(iv) do not apply to a tainted asset acquisition if—

(A) The transferor is a foreign corporation, a corporation described in section 934(b), or a corporation to which an election under section 936 applies or

(B) The transfer is a transaction to which the pricing rules of section 994 (relating to DISC) or section 925 (relating to FSC) apply.

(ii) *Exception for certain foreign transferors.* Paragraph (d)(1)(i) of this section does not apply to an asset transfer by a foreign corporation if the gain recognized by that foreign corporation on the transfer is effectively connected with the conduct by that corporation of a trade or business within the United States.

(2) *Limit on crediting foreign tax against U.S. tax on offset prohibition gain*—(i) *Definitions*—(A) *Offset prohibition gain.* "Offset prohibition

gain" is INA gain (or a remaining ICA gain amount) that is subject to an offset prohibition election under §1.338–4T(f)(6)(iv).

(B) *Offset prohibition foreign taxes.* "Offset prohibition foreign taxes"-are foreign income taxes paid or accrued with respect to offset prohibition gain, as determined under the principles of § 1.904–4(d)(2).

(C) *Otherwise applicable section 904 limitation.* The "otherwise applicable section 904 limitation" is the limitation described in section 904(d)(1) or 907 (b) (prior to amendment by section 211(c)(1) of TEFRA) that would have applied to the offset prohibition gain but for this subparagraph (2).

(ii) *One-way special foreign tax credit limitation for offset prohibition foreign taxes.* A special foreign tax credit limitation applies to offset prohibition gain ("special limitation") in lieu of the otherwise applicable section 904 limitation. The special limitation is the limitation in section 904(a), computed by taking into account as foreign source income only offset prohibition gain from sources without the United States.

(iii) *Excess special limitation disregarded for purposes of section 904(c).* For purposes of carryback or carryover of excess foreign taxes under section 904(c) to the taxable year in which there is offset prohibition gain, any excess special limitation for that taxable year is disregarded. "Excess special limitation" is the special limitation for a taxable year in excess of offset prohibition foreign taxes paid or accrued in that year.

(iv) *Special rule for creditability of offset prohibition foreign taxes in excess of special limitation.* Offset prohibition foreign taxes in excess of the special limitation for the taxable year in which those taxes are paid or accrued nonetheless are creditable in that year if the otherwise applicable section 904 limitation (determined without regard to offset prohibition gain) exceeds the foreign taxes (not including offset prohibition foreign taxes) that are paid or accrued in that year and that are creditable under the otherwise applicable section 904 limitation in that year. Any remaining offset prohibition foreign taxes carry back or carry over to other taxable years as foreign taxes subject to the otherwise applicable section 904 limitation.

(v) *Coordination with restricted credit provisions of § 1.338–4T(f)(6)(iv).* *Answer 2* (ii)(B) and *Answer 3* (iv)(D) of § 1.338–4T(f)(6)(iv) each impose a special limitation on the amount of a restricted credit (as defined therein) allowable as a credit against the tax liability of a corporation (or of an affiliated group filing consolidated returns) for the taxable year in which that corporation (or group) recognizes offset prohibition gain. (The foreign tax credit is not defined as a restricted credit.) The tax liability taken into account for purposes of determining the amount of certain restricted credits (*e.g.*, the investment credit under section 46) is required by statute to be reduced by the foreign tax credit allowed for the year. See section 38(c)(2). Solely for purposes of that reduction, the portion of the foreign tax credit allowed for the year that is creditable under the special limitation of paragraph (d)(2)(ii) of this section is disregarded.

(3) *Examples.* The provisions of paragraph (d)(2) of this section may be illustrated by the following examples:

Example (1). (i) On December 31, 1984, P acquires all of the stock of DT in a qualified stock purchase and timely files a protective carryover election pursuant to § 1.338–4T(f)(6)(ii). P makes an offset prohibition election in the protective carryover election. P and DT file separate calendar year returns. On June 1, 1985, P purchases an asset from DT's foreign branch in a tainted asset acquisition subject to the offset prohibition election. See § 1.338–4T(f)(6)(iv) *Answer 2* (ii). For 1985, DT recognizes a foreign source offset prohibition gain of $40,000 as a result of the asset transfer and also recognizes $60,000 of other foreign source income. It is assumed for the sake of simplicity that T has no deductions allocable to foreign source income. Absent paragraph (d)(2) of this section, all $100,000 of DT's foreign source income would be subject to the section 904 limitation for income described in section 904(d)(1)(E). A foreign income tax of $20,000 is specifically allocable to the $40,000 offset prohibition gain, and a foreign income tax of $24,000 is specifically allocable to the remaining $60,000 of foreign source income. DT's total taxable income for 1985 from all sources is $200,000, all of which is ordinary income. The United States income tax (before the foreign tax credit) is $81,875. (This tax reflects an equal division of the taxable income bracket amounts between P and DT.) DT has no excess foreign taxes available as a carryover to 1985 under section 904(c).

(ii) DT makes the following foreign tax credit calculations for 1985:

	(A) Offset prohibition gain ($40,000)	(B) Other income ($60,000)
(1) Foreign tax	$20,000	$24,000
(2) Limitation on credit	[1] 16,375	[2] 24,563
(3) Preliminary amount of foreign tax creditable (lower of line (1) or line (2))	16,375	24,000
(4) Excess foreign tax (line (1)—line (2))	3,625	N/A
(5) Preliminary excess limitation (line (2)–line (1))	N/A	563
(6) Foreign tax in line (4) creditable in current year (lower of line (4) and line (5))	N/A	563
(7) Final creditable foreign tax: (i) By income class (line (3) + line (6))	16,375	24,563
(ii) Total: $40,938		
(8) Unused foreign tax available as carryover or carryback to other taxable years (line (4)—line (6))	N/A	3,062

[1] $81,875 × $40,000/$200,000.
[2] $81,875 × $60,000/$200,000.

The remaining offset prohibition foreign tax, $3,062, will carryback or carryover to other taxable years as a foreign tax allocable to income described in section 904(d)(1)(E). Had the offset prohibition foreign tax been less than the separate limitation for offset prohibition gain, the excess limitation would have been disregarded for purposes of carrying unused foreign taxes to 1985.

Example (2). (i) Assume the same facts as in Example (1), except that a foreign income tax of $15,375 is specifically allocable to the $40,000 offset prohibition gain and a foreign income tax of $25,563 is specifically allocable to the remaining $60,000 of foreign source income.

(ii) DT makes the following foreign tax credit calculations for 1985:

	(A) Offset prohibition gain ($40,000)	(B) Other income ($60,000)
(1) Foreign tax	$15,375	$25,563
(2) Limitation on credit (same as Example (1))	16,375	24,563
(3) Preliminary amount of foreign tax creditable (lower of line (1) or line (2))	15,375	24,563
(4) Excess foreign tax line (1)—line (2))	N/A	1,000
(5) Preliminary excess limitation (line (2)—line (1))	[1] N/A	N/A
(6) Foreign tax in line (4) creditable in current year (lower of line (4) and line (5))	N/A	N/A
(7) Final creditable foreign tax: (i) By income class (line (3)+ line (6))	15,375	24,563
(ii) Total: $39,938		
(8) Unused foreign tax available as carryover or carryback to other taxable years (line (4)—line (6))	N/A	1,000

[1] Note that although the special limitation actually exceeds offset prohibition foreign taxes by $1,000, that excess special limitation is disregarded for all purposes.

Example (3). (i) Assume the same facts as in Example (1), except that foreign taxes paid in 1985 ($44,000) cannot be specifically allocated between the offset prohibition gain and other foreign source income.

(ii) Under the principles of § 1.904–4(d) (2) (ii), $17,600 of the total foreign income tax of $44,000 is allocated to offset prohibition gain (*i.e.*, $44,000 x $40,000/$100,000) and the remainder, $26,400, is allocated to the other foreign source income (*i.e.*, $44,000 x $60,000/$100,000). DT makes the following foreign tax credit calculations for 1985:

	(A) Offset prohibition gain ($40,000)	(B) Other income ($60,000)
(1) Foreign tax	$17,600	$26,400
(2) Limitation on credit (same as Example (1))	16,375	24,563
(3) Preliminary amount of foreign tax creditable (lower of line (1) or line (2))	16,375	24,563
(4) Excess foreign tax:		
(i) By income class (line (1)—line (2))	1,225	1,837
(ii) Total: $3,062		
(5) [1] Final creditable foreign tax—		
(i) By income class (line (3))	16,375	24,563
(ii) Total: $40,938		
(6) Unused foreign tax available as carryover or carryback to other taxable years (line (4)(ii))	N/A	3,062

[1] Note that lines (5) and (6) of the table used in Example (1) are eliminated here. Those lines are unnecessary because there is no excess limitation.

Example (4). (i) Assume the same facts as in Example (1). Assume in addition that for 1985 DT's current year investment credit earned (as calculated before application of the limitation based on amount of tax under section 38(c)) is $24,000. Assume also that DT's pre-credit tax liability would be $63,475 if the offset prohibition gain of $40,000 were disregarded.

(ii) DT's investment credit is a restricted credit. Accordingly, for purposes of determining the amount of that credit allowable as a credit against DT's tax in 1985, DT's pre-credit tax liability is calculated as if the offset prohibition gain were not income to DT. See § 1.338–4T(f)(6)(iv) *Answer 2*(ii)(B). Because the tax liability taken into account for purposes of determining the amount of the investment credit is required under section 38(c) to be reduced by the foreign tax credit, the special rule of paragraph (d)(2)(v) of this section applies. Accordingly, DT must make the following computations:

(1) Investment credit earned in 1985	$24,000
(2) Pre-credit U.S. tax liability (disregarding offset prohibition gain)	63,475
(3) Foreign tax credit as adjusted under paragraph (d)(2)(v) of this section	[2]24,563
(4) Net tax liability under section 38(c)(2) line (2) minus line (3)	38,912
(5) Investment credit allowable as credit against tax for 1985 (lesser of line (1) or line (4) [3])	24,000

[1] Note that the portion of the foreign tax credit allowed for the year that is creditable under the special limitation of paragraph (d)(2)(ii) of this section, $16,375 (line (7)(i), Col. (A) of table in Example (1)) is disregarded for purposes of the reduction required by section 38(c)(2).

[2] If the investment credit earned in 1985 exceeded $25,000, the maximum amount of that excess that would be allowable as an investment credit for 1985 would be $11,825, i.e., 85 percent of the net tax liability, in excess of $25,000. See section 38(c)(1)(B).

(e) *Certain transactions subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D)*—(1) *Basis step-up attributable to gain recognized under section 367.* The acquisition of property is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D) if, solely be reason of the transferor's recognition of gain under section 367(a), the transferee's basis in the transferred asset exceeds the transferor's basis in that asset immediately before the transfer.

(2) *Acquisition of foreign currency*—(i) *General rule.* The acquisition of foreign currency is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D) if the acquisition occurs in the ordinary course of the transferor's trade or business (as determined under principles similar to those in § 1.338–4T(f)(3)). Solely for purposes of this subparagraph (2), a transferor is considered to act in the ordinary course of its trade or business when it—

(A) Pays interest or principal on an obligation denominated in foreign currency,

(B) Makes a loan denominated in foreign currency, or

(C) Pays a dividend denominated in foreign currency.

(ii) *No inference regarding character of gain or loss.* No inference should be drawn regarding the character of exchange gain or loss realized on transactions described in this paragraph (e)(2).

(f) *Effect of section 338 on foreign target.* If, for its taxable year that includes its acquisition date and for any other relevant taxable year, a foreign target for which a section 338 election is made has no items of income for which it is taxable under chapter 1 of the Code (including an item of income resulting from the section 338 election), then, in general, the section 338 election results in potential United States tax consequences only for domestic shareholders of that foreign target. Thus, for example, the adjustment to the foreign target's earnings and profits that results from the section 338 election may affect the amount of a distribution that is treated as a dividend for the domestic shareholders. Similarly, if the foreign target is a controlled foreign corporation, section 338 may affect the amount included in the gross income of certain domestic shareholders under section 951 or 1248.

(g) *Operation of section 1248 if section 338 election made*—(1) *Scope.* This paragraph (g) applies section 1248 to the shareholders of a target that is a controlled foreign corporation and that is subject to a section 338 election ("CFCT"). The principles of this paragraph (g) also apply if a domestic corporation described in section 1248(e) is involved.

(2) *General rules*—(i) *Transfer of CFCT stock on or before acquisition date.* If a person transfers a block of CFCT stock on or before CFCT's acquisition date but during CFCT's 12-month acquisition period, then, for purposes of determining the amount (if any) treated as a dividend to the transferor under section 1248, old CFCT's earnings and profits attributable to the block is the enhanced earnings and profits amount as determined under paragraph (g) (3) or (4) of this section (as the case may be).

(ii) *Effect of gain recognition election.* If P makes a gain recognition election under § 1.338–4T(j)(2) of the nonrecently purchased CFCT stock, then paragraph (g)(2)(i) of this section shall apply to the gain recognized by P under section 338(b)(3)(A) as if the nonrecently purchased CFCT stock were actually sold at the close of CFCT's acquisition date.

(iii) *Carryover CFCT stock.* If on the close of CFCT's acquisition date a non-P group member holds CFCT stock (or if a P group member holds nonrecently purchased CFCT stock that is not subject to a gain recognition election under § 1.338–4T(j)(2)) ("carryover CFCT stock"), then, solely for purposes of that carryover CFCT stock, old CFCT's earnings and profits (adjusted to reflect deemed sale of assets under section 338) and the foreign taxes attributable to those earnings and profits shall carry over (in their annual layers) to new CFCT, subject to the special rules and limitations prescribed in paragraph (g)(6) of this section.

(iv) *Special rule for determining status as controlled foreign corporation.* If a foreign target ceases to be a controlled foreign corporation solely by reason of one or more purchases of its stock that constitutes a qualified stock purchase, then all of its stock that is included in that qualified stock purchase is deemed to have been acquired by the purchasing corporation on that foreign target's acquisition date for purposes of determining under this paragraph (g) the period during which that foreign target (and all of its section 1248(c)(2) subsidiaries) are controlled foreign corporations.

(v) *Section 1248(c)(2) subsidiary.* For purposes of this paragraph (g), a "section 1248(c)(2) subsidiary" with respect to a foreign target is any corporation whose earnings and profits may be deemed under section 1248(c)(2) to be included with the earnings and profits of that foreign target.

(vi) *Special deemed stock sale rule.* For all purposes of the Code, a transferor of stock in a controlled foreign corporation is deemed to sell the stock directly to P or a P group member on the transferee's acquisition date if

(A) a member of the S group transfers the stock to a domestic member of the S group that becomes a target for which a section 338 election applies, (B) the transfer takes place on or before the transferee's acquisition date and during the consistency period of the original target or an affected target, and (C) the controlled foreign corporation becomes an affected target. The transferor shall not be deemed to sell stock under this subdivision (vi) if it is demonstrated that the transfer was not in anticipation of, or pursuant to a plan to make, a direct or indirect transfer of the transferee's stock to P or a P group member. Thus, for example, there will not be a deemed sale of the stock of a controlled foreign corporation to P or a P group member if, prior to the time the controlled foreign corporation becomes an affected target, section 351(a) applies to the transfer by an S group member of the stock of the controlled foreign corporation to a domestic member of the S group. The Internal Revenue Service may treat a transfer to a foreign member as subject to this subdivision (vi) if such treatment is appropriate to carry out the purposes of this subdivision (vi).

(3) *Enhanced earnings and profits amount if stock transferred on CFCT's acquisition date.* For a block of CFCT stock actually or deemed transferred on CFCT's acquisition date, the enhanced earnings and profit amount is the earnings and profits of CFCT (and any section 1248(c)(2) subsidiary) attributable to the block under the applicable section 1248 regulations. For purposes of this subparagraph (3), earnings and profits of CFCT (and of each section 1248(c)(2) subsidiary) shall be deemed to include the gains and other income amounts that each would have recognized in the deemed sale of assets under section 338(a)(1) had each been a domestic corporation.

(4) *Enhanced earnings and profits amount if stock transferred before CFCT's acquisition date*—(i) *General rule.* For a block of CFCT stock actually or deemed transferred beofore CFCT's acquisition date, the enhanced earnings and profits amount is the sum of the following amounts:

(A) Old CFCT's earnings and profits attributable to the block under the applicable section 1248 regulations, applied however by not including in CFCT's earnings and profits (accumulated for the taxable year of CFCT in which that stock transfer occurs) the recapture earnings and profits for that year, and

(B) CFCT's recapture earnings and profits for each affected taxable year of CFCT that would have been attributable to the block under the applicable section 1248 regulations had that block been transferred on CFCT's acquisition date.

(ii) *Affected taxable year of CFCT.* An affected taxable year of CFCT is the taxable year of CFCT in which the CFCT stock is transferred and each subsequent taxable year of CFCT up to and including its taxable year that includes CFCT's acquisition date.

(iii) *CFCT's recapture earnings and profits.* CFCT's recapture earnings and profits for an affected taxable year are an amount (not less than zero) equal to (A) CFCT's earnings and profits accumulated for that taxable year, minus (B) such earnings and profits as redetermined by disregarding recapture amounts for that taxable year. The recapture earnings and profits for a taxable year may not, however, exceed the earnings and profits of CFCT accumulated for that taxable year.

(iv) *Recapture amount.* A "recapture amount" for an affected taxable year is—

(A) The amount of gain realized as a result of an actual sale or exchange of an asset during that year, to the extent that such amount would have been recognized by CFCT in the deemed sale of assets under section 338(a)(1) had CFCT been a domestic corporation that held that asset on its acquisition date and had the deemed sale price of that asset been equal to the actual amount realized on the sale or exchange of that asset, and

(B) For the affected taxable year in which the deemed sale of assets under section 338(a)(1) occurs, the gains and other income amounts that would have been recognized by CFCT in the deemed sale of assets had CFCT been a domestic corporation.

(v) *Exception to enhancement rule of paragraph (g)(4)(i) for transitional period stock transfer.* Paragraph (g)(4)(i) of this section does not apply to a stock transfer occurring on or before *February 12, 1986* or after that date but pursuant to a contract of sale that is binding on both the acquiring P group member and the seller as of that date. Nevertheless, if such a transfer occurs during old CFCT's final taxable year, then the transferor's ratable share of old CFCT's earnings and profits accumulated for that year under the applicable section 1248 regulations will reflect the earnings and profits resulting from the deemed sale of assets under section 338(a)(1) (pro-rated on a daily basis for the period during which the transferor held the CFCT stock).

(iv) *Section 1248(c)(2) subsidiary with same taxable year as CFCT.* For a block of CFCT stock with respect to which there are one or more section 1248(c)(2) subsidiaries, all of which have the same taxable year as CFCT, the provisions of paragraph (g)(4)(i)–(iv) of this section shall apply in the following manner:

(A) *Recapture amounts for subsidiaries.* First, for each affected taxable year, (*1*) determine separately the recapture amounts of CFCT and of each section 1248(c)(2) subsidiary, (*2*) under the applicable section 1248 regulations attribute to the block the amount for CFCT, (*3*) under the principles of section 1248(c)(2) attribute to block the amounts for each such subsidiary, and (*4*) determine for the block the sum of the amount attributed from CFCT and the amounts attributed from the subsidiaries.

(B) *Earnings and profits of subsidiaries.* Second, the earnings and profits accumulated for each affected taxable year of CFCT and of each section 1248(c)(2) subsidiary shall be determined and, under the applicable principles, attributed for that year to the block.

(C) *Recapture earnings and profits for block.* Third, compute the recapture earnings and profits for each affected taxable year for the block as an amount (not less than zero) equal to (*1*) the sum of earnings and profits accumulated for that year of CFCT attributed to the block and of each section 1248(c)(2) subsidiary attributed under (B) of this subdivision (vi) to the block, minus (*2*) such sum as redetermined by disregarding recapture amounts for that year of CFCT and its section 1248(c)(2) subsidiaries. Recapture earnings and profits for a taxable year for the block may not, however, exceed the amount in (*1*) of this subdivision (C).

(D) *Application of general rule.* Fourth, apply the general rule in paragraph (g)(4)(i) of this section by using amounts attributed to the block under paragraph (g)(4)(vi) (B) and (C) of this section instead of the amounts determined solely for CFCT.

(vii) *Section 1248(c)(2) subsidiary with taxable year different from CFCT's.* The principles of paragraph (g)(4)(vi) of this section shall apply if one or more section 1248(c)(2) subsidiaries have a different taxable year than CFCT.

(5) *Section 338(c)(1) inapplicable.* The enhanced earnings and profits amounts under paragraph (g) (3) and (4) of this section are determined without regard to section 338(c)(1) (relating to surrogate tax). For an exception applicable to certain carryover CFCT stock, see paragraph (g)(6)(iv) of this section.

(6) *Carryover of old CFCT earnings and profits for purposes of carryover CFCT stock*—(i) *General rule.* The earnings and profits (and attributable

foreign taxes) attributable to old CFCT stock carry over to new CFCT stock under paragraph (g)(2)(iii) of this section solely for purposes of (A) characterizing an actual distribution with respect to a share of carryover CFCT stock as a dividend, (B) characterizing gain on a post-acquisition date transfer of a share of carryover CFCT stock as a dividend under section 1248, and (C) determining the foreign taxes deemed paid under section 902 with respect to the amount thereby treated as a dividend.

(ii) *Cap on carryover of earnings and profits.* The earnings and profits of old CFCT are taken into account with respect to a share of carryover CFCT stock only to the extent of the section 1248 amount for that share.

(iii) *Section 1248 amount for stock other than section 338(c)(1) stock.* The section 1248 amount for a share of carryover CFCT stock other than section 338(c)(1) stock is the amount (if any) of the gain that, under the enhanced earnings and profits provisions of paragraph (g)(3) of this section, would have been included in the shareholder's gross income as a dividend under section 1248 had the shareholder transferred that share to P on CFCT's acquisition date for a consideration equal to the fair market value of that share on that date (or, with respect to nonrecently purchased CFCT stock treated as carryover CFCT stock, had a gain recognition election under section 338(b)(3)(A) applied to that share).

(iv) *Section 1248 amount for section 338(c)(1) stock.* The section 1248 amount for a share of section 338(c)(1) stock is determined in the same manner as for other carryover CFCT stock, except that the earnings and profits attributable to a share of section 338(c)(1) stock for each taxable year of old CFCT under the principles of paragraph (g)(3) of this section (*i.e.*, without regard to section 338(c)(1)) are increased or decreased by the section 338(c)(1) amount for that share for that year.

(v) *Section 338(c)(1) stock.* For purposes of this paragraph (g)(6), "section 338(c)(1) stock" is carryover CFCT stock (other than nonrecently purchased CFCT stock) that is neither—

(A) Purchased by a P group member at any time during the one-year period beginning on CFCT's acquisition date nor

(B) Redeemed by CFCT in a transaction described in section 338 (h)(7)(B) during that 1-year period.

(vi) *Section 338(c)(1) amount.* The "section 338(c)(1) amount" for a share of section 338(c)(1) stock is a positive (or negative) amount equal to the net section 338(c)(1) gain or loss of old CFCT for its taxable year, divided by the total number of shares of section 338(c)(1) stock. For purposes of this subparagraph (6), the net section 338(c)(1) amount for a share takes into account the net section 338(c)(1) gain or loss for each section 1248(c)(2) subsidiary that is attributed under the principles of section 1248(c)(2) to the share. (If convenient, the section 338(c)(1) amount may be computed with respect to a block of stock.) Section 338(c)(1) gains or losses are gains or losses that, had CFCT (or the section 1248(c)(2) subsidiary) been a domestic corporation, would have been recognized by it under section 338(c)(1)—

(A) As a result of its deemed sale of assets under section 338(c)(1) or

(B) As a result of its actual sale of assets under the circumstances described in section 338(h)(12) and § 1.338–4T(k)(1) *Answer 3* (ii).

(vii) *Old CFCT earnings and profits unaffected by post-acquisition date deficits.* Notwithstanding that new CFCT incurs deficits in earnings and profits, a post-acquisition date distribution with respect to a share of carryover CFCT stock (or gain recognized in a post-acquisition date transfer of a share of carryover CFCT stock when that transfer is governed by section 1248) shall be treated as a dividend at least to the extent of the section 1248 amount for that share, reduced by prior post-acquisition date distributions with respect to that share out of the earnings and profits of old CFCT. Thus, for example, the first distribution by new CFCT with respect to a share of carryover CFCT stock is treated as a dividend by the distributee to the extent of the section 1248 amount for that share, notwithstanding that new CFCT's losses exceed old CFCT's earnings and profits at the close of the acquisition date. A distribution considered made out of old CFCT's earnings and profits pursuant to this subparagraph (6) has no effect on the earnings and profits of new CFCT.

(viii) *Character of CFCT stock as carryover CFCT stock eliminated upon disposition.* A share of CFCT stock is not considered carryover CFCT stock after it is disposed of in a transaction described in section 1248 (a)(1) or (f)(1)(B) by the person holding such stock on the close of CFCT's acquisition date, provided that all gain realized on the transfer is recognized at the time of the transfer, or that, if less than all of the realized gain is recognized, the recognized amount equals or exceeds the remaining section 1248 amount for that share.

(7) *Application of principles of this paragraph to section 1246.* The principles of this paragraph (g) also apply to shareholders of a foreign target that are subject to section 1246.

(8) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

Example (1). (i) CFCT is a calendar year foreign corporation. DA, a United States person, has owned 90 of the 100 shares of CFCT's only class of outstanding stock since CFCT was organized on March 13, 1977. P has held the remaining 10 shares of CFCT since CFCT was organized. (Those 10 shares constitute nonrecently purchased CFCT stock in P's hands within the meaning of section 338(b)(6)(B).) On November 1, 1986, P purchases all 90 shares of CFCT stock held by DA for $90,000 in cash and makes an express election for CFCT. Thus, for United States tax purposes, CFCT has a short taxable year ending at the close of November 1, 1986. Assume DA recognizes gain of $81,000 on the sale of the CFCT stock. All 90 shares of CFCT stock constitute a block of stock in DA's hands within the meaning of § 1.1248–2(b) and the conditions of § 1.1248–2(c) are satisfied with respect to that block of stock. CFCT has no earnings and profits accumulated (or deficit) for any taxable year prior to 1986. Assume that, if CFCT were a domestic corporation, it would recognize gain of $20,000 on November 1, 1986, by reason of its deemed sale of assets under section 338(a)(1). CFCT's earnings and profits accumulated for its short 1986 taxable year ending on November 1, 1986, without taking into account that $20,000 of gain, total $50,000. P also makes a gain recognition election for CFCT under section 338(b)(3)(A) and § 1.338–4T(j)(2).

(ii) DA's sale of CFCT stock to P on November 1, 1986, is a transfer to which section 1248 and paragraph (g) (2)(i) and (3) of this section apply. For purposes of applying section 1248(a) to DA, the earnings and profits accumulated by CFCT for its short taxable year ending on November 1, 1986, are $70,000, *i.e.*, the earnings and profits accumulated for that taxable year as determined under § 1.1248–2(b), taking into account the gain of $20,000 that CFCT would have recognized in the deemed sale of assets under section 338(a)(1) had CFCT been a domestic corporation ($50,000 + $20,000). See paragraph (g)(3) of this section. Pursuant to § 1.1248–2(e), $63,000 of the $70,000 of earnings and profits accumulated for 1986 are attributable to the block of CFCT stock sold by DA on November 1, 1986 (*i.e.*, $70,000 × 90/100), since that block (A) was held for the entire taxable year ending on November 1, 1986, and (B) includes 90 of the 100 shares of outstanding CFCT stock. Accordingly, $63,000 of DA's gain of $81,000 on the sale of CFCT stock is included under section 1248(a) in DA's gross income as a dividend.

(iii) Assume that P recognizes a gain of $9,000 with respect to the 10 shares of nonrecently purchased CFCT stock by reason of the gain recognition election, which causes a hypothetical acquisition date sale of nonrecently purchased stock. Under paragraph (g) (2)(ii) and (3) of this section, that hypothetical sale is treated as a transfer

of CFCT stock by a U.S. person to P on CFCT's acquisition date in a transfer to which section 1248 applies. Thus, under § 1.1248–2(e), $7,000 of the $70,000 of earnings and profits accumulated for 1986 are attributable to the block of 10 shares of CFCT stock hypothetically sold by P at the close of November 1, 1986 (*i.e.*, $70,000×10/100), since that block (A) was held for the entire taxable year ending on November 1, 1986, and (B) includes 10 of the 100 shares of outstanding CFCT stock. Accordingly, $7,000 of P's gain of $9,000 on the hypothetical sale of 10 shares of CFCT stock is included under section 1248(a) in P's gross income as a dividend.

Example (2). (i) Assume the same facts as in Example (1), except that P does not make a gain recognition election.

(ii) The nonrecently purchased CFCT stock held by P (*i.e.*, the 10 shares owned by P since CFCT was organized) is carryover CFCT stock (and not section 338(c)(1) stock). See paragraph (g)(2)(iii) of this section. Accordingly, the earnings and profits (and attributable foreign taxes) of old CFCT carry over to new CFCT solely for purposes of that block of 10 shares. However, the amount of old CFCT's earnings and profits taken into account with respect to that block in the event of a distribution by new CFCT with respect that block (or in the event of P's sale of that block in a transaction governed by section 1248) may not exceed the section 1248 amount for that block. The section 1248 amount for that block is the amount of the section 1248 dividend P would have recognized with respect to that block had it made a gain recognition election under section 338(b)(3)(A). Under the facts of Example (1)(iii), P would have recognized a gain of $9,000 with respect to that block, and $7,000 of that amount would have been a section 1248 dividend, *i.e.*, $70,000×10/100. Accordingly, the section 1248 amount for the block of 10 shares of nonrecently purchased CFCT stock is $7,000.

Example (3). (i) CFCT is a calendar year foreign corporation. DA, a United States person, has owned all 100 shares of CFCT's only class of outstanding stock since CFCT was organized on March 13, 1977. On August 7, 1986, P purchases 40 of the 100 shares of CFCT stock held by DA for cash. On May 26, 1987, P purchases the remaining 60 shares of CFCT stock from DA for cash and makes an express election for CFCT. Thus, for United States tax purposes, CFCT has a short taxable year ending on May 26, 1987. Assume that gain recognized by DA is $80,000 on the August 7, 1986, sale and $130,000 on the May 26, 1987, sale. The 40 shares and 60 shares of CFCT stock sold by DA constitute two blocks of stock in DA's hands within the meaning of § 1.1248–2(b). The conditions of § 1.1248–2(c) are satisified with respect to each block. CFCT has no earnings and profits accumulated (or deficit) for any taxable year prior to 1986. In 1986, CFCT recognizes gain of $30,000 on the sale of used machinery. All of that gain would have been recognized by CFCT in the deemed sale of assets under section 338 as depreciation recapture under section 1245 had CFCT been a domestic corporation that held the machinery on the acquisition date. CFCT's earnings and profits accumulated for 1986 are $120,000 if that $30,000 gain is taken into account. (Accordingly, CFCT's earnings and profits accumulated for 1986, as determined without that $30,000, are $90,000.) If CFCT were a domestic corporation, it would recognize a gain of $20,000 on May 26, 1987, by reason of its deemed sale of assets under section 338(a)(1). CFCT's earnings and profits accumulated for its short 1987 taxable year ending on May 26, 1987, are $80,000 if that $20,000 gain is taken into account. (Accordingly, CFCT's earnings and profits accumulated for 1987, as determined without that $20,000, are $60,000.)

(ii) DA's sales of the blocks of CFCT stock to P are transfers to which section 1248 and paragraph (g)(2)(i), (3), and (4) of this section apply. Under paragraph (g)(4)(ii) of this section, CFCT's 1986 and 1987 taxable years are affected taxable years of CFCT for which CFCT's recapture earnings and profits must be determined. For 1986, CFCT has a recapture amount of $30,000, *i.e.*, the $30,000 of gain recognized by CFCT on the sale of machinery in 1986. See paragraph (g)(4)(iv)(A) of this section. Accordingly, under paragraph (g)(4)(iii) of this section, CFCT's recapture earnings and profits for 1986 are $30,000, *i.e.*, $120,000 − $90,000. For 1987, CFCT has a recapture amount of $20,000, *i.e.*, the $20,000 of gain hypothetically recognized by CFCT in its deemed sale of assets under section 338(a)(1)) and, accordingly, recapture earnings and profits of $20,000, *i.e.*, $80,000 − $60,000.

(iii) The enhanced earnings and profits of CFCT attributable to the block of 40 shares of CFTC stock sold on August 7, 1986, are determined under paragraph (g)(4) of this section and the applicable section 1248 regulations as follows:

Earnings and profits attributable to block for 1986 (determined without recapture earnings and profits), *i.e.*, $90,000×219/365×40/100	$21,600
Recapture earnings and profits attributable to block for 1986 *i.e.*, $30,000×40/100	12,000
Recapture earnings and profits attributable to block for 1987 under applicable section 1248 regulations, *i.e.*, $20,000×40/100	8,000
Total earnings and profits attributable to block	41,600

Accordingly, $41,600 of DA's $80,000 gain on the sale of the 40 shares of CFCT stock is included under section 1248(a) in DA's gross income as a dividend.

(iv) The enhanced earnings and profits of CFCT attributable to the block of 60 shares of CFCT stock sold on May 26, 1987, are determined as follows under paragraph (g)(3) of this section and the applicable section 1248 regulations:

Earnings and profits attributable to block for 1986, *i.e.*, $120,000×60/100	$72,000
Earnings and profits attributable to block for 1987, *i.e.*, $80,000×60/100	48,000
Total earnings and profits attibutable to block	120,000

Accordingly, $120,000 of DA's $130,000 gain on the sale of 60 shares of CFCT stock on May 26, 1987, is included in DA's gross income as a dividend.

Example (4). (i) Assume the same facts as in Example (1), except that the 10 shares of CFCT stock not purchased by P from DA on November 1, 1986, are held by DB, a U.S. person, rather than by P. DB has held those shares, at an aggregate basis of $1,000 since CFCT was organized. New CFTC makes no actual distributions to DB. On December 15, 1987, P purchases those 10 shares of CFTC stock from DB for $12,000 in cash, and DB recognizes a gain of $11,000. Assume that the fair market value of those 10 shares on November 1, 1986, is $10,000. Assume in addition that, had CFCT been a domestic corporation, it would have recognized an additional $1,000 of gain in its deemed sale of assets under section 338(a)(1) on November 1, 1986, by reason of section 338(c)(1), for a total deemed sale gain of $21,000. Finally, assume that new CFCT incurs a $100,000 net operating loss for its short taxable year ending on December 31, 1986, and a $50,000 net operating loss for 1987.

(ii) The tax consequences to DA are the same as in example (1), since deemed sale gain under section 338(c)(1) is disregarded for purposes of determining the earnings and profits attributable to CFCT stock sold during the 12-month acquisition period ending on CFCT's acquisition date. See paragraph (g)(5) of this section.

(iii) The CFCT stock held by DB, a non-P group member, on the close of CFCT's acquisition date is carryover CFCT stock. See paragraph (g)(2)(iii) and (6) of this section. Accordingly, the earnings and profits (and foreign taxes attributable to such earnings and profits) carryover to new CFCT solely for purposes of the CFCT stock held by DB. (Under these facts, DB holds all of the carryover CFCT stock.) In addition, DB's sale of the CFCT stock to P on December 15, 1987, is a transfer to which section 1248 applies. DB's shares of CFCT stock constitute a block of stock in DB's hands within the meaning of § 1.1248–2(b) and the conditions of § 1.1248–2(c) are satisfied with respect to that block

(iv) Because of the deficits incurred by new CFCT, DB's gain of $11,000 on the sale of its CFCT stock to P on December 15, 1987, is characterized as a section 1248 dividend only to the extent of the section 1248 amount. See paragraph (g)(6)(vii) of this section. Because the 10 shares held by DB constitute section 338(c)(1) stock (as defined in paragraph (g)(6)(v) of this section), the section 1248 amount is determined under paragraph (g)(6)(iv) of this section. Since each of the 10 shares has the same basis and holding period

in DB's hands, it is convenient to do the necessary calculations for the block of 10 shares rather than for each share.

(v) The first step in determining the section 1248 amount is to calculate the gain DB would have recognized had it sold its CFCT stock to P on CFCT's acquisition date for a consideration equal to the fair market value of the stock on that day ("hypothetical stock sale gain"). The fair market value of the 10 shares on that date is assumed to be $10,000. Thus, DB's hypothetical stock sale gain is $9,000, *i.e.*, $10,000–$1,000.

(vi) The second step in determining the section 1248 amount is to calculate the protion of the hypothetical stock sale gain that would have been a section 1248 dividend. This calculation also involves two steps. First, the earnings and profits attributable to the block for each relevant taxable year of old CFCT must be determined under paragraph (g)(3) of this section. The only relevant year under these facts is the short taxable year ending on November 1, 1986. The earnings and profits attributable to the block for that short year under such paragraph (g)(3) are $7,000, *i.e.*, $70,000 x 10/100. Note that the earnings and profits taken into account under such paragraph (g)(3) do not reflect the $1,000 gain under section 338(c)(1). The second step, in calculating the portion of the hypothetical stock sale gain that would have been a section 1248 dividend, is to increase (or decrease) that $7,000 by the section 338(c)(1) amount attributable to the block. Under these facts, there is a single section 338(c)(1) gain of $1,000. Because the block of stock at issue constitutes the entire amount of section 338(c)(1) stock, the entire $1,000 is the section 338(c)(1) amount attributable to the block. The portion of the hypothetical stock sale gain that would have been a section 1248 dividend therefore is $8,000, *i.e.*, the lesser of the attributable earnings and profits of $8,000 (i.e., $7,000+$1,000) or the hypothetical stock sale gain of $9,000. Thus, the section 1248 amount for the block of stock sold by DB on December 15, 1987, is $8,000. Accordingly, $8,000 of DB's $11,000 gain on the actual December 15, 1987, stock sale is a section 1248 dividend.

(vii) If DB were a corporation it would be eligible for an indirect foreign tax credit on the section 1248 dividend it receives, since foreign taxes attributable to old CFCT's earnings and profits also carryover to new CFCT for purposes of the carryover CFCT stock. (Such deemed paid taxes would be treated as a dividend under section 78.)

Example (5). On December 31, 1986, P purchases from DS all of the stock of DT in a qualified stock purchase. For many years, DT has held as one block all of the stock of CFCT1 and CFCT1 has held all of the stock of CFCT2. All corporations use the calendar year as the taxable year and have no earnings and profits (or deficit) accumulated for any taxable year prior to 1986. P makes an express election for DT. A regular exclusion election under paragraph (c)(2) of this section is not made, so that CFCT1, and CFCT2 are subject to deemed elections under section 338(f)(1) as a result of the express election for DT. Pursuant to § 1.338–4T(c)(3), the acquisition date of DT and of each of its two subsidiaries is December 31, 1986. For purposes of calculating the amount of the section 1248(f) dividend recognized by DT as a result of its deemed sale of the block of CFCT1 stock, the enhanced earnings and profits attributable to the block are calculated under paragraph (g)(3) of this section in the table below, based upon the facts assumed:

	CFCT1	CFCT2
	(A)	(B)
1. Earnings and profits accumulated for 1986 under §1.1248–2 attributable to the block	$100	($80)
2. Deemed sale gain that would have been recognized if it were a domestic corporation	0	15
3. Sum of lines 1 and 2	100	(65)
4. Enhanced earnings and profits attributable to the block (sum of line 3 (A) and (B))	35	.....

Example (6). Assume the same facts as in *Example (5)* except that CFCT1 holds only 80 percent of the single class of outstanding stock of CFCT2. For purposes of calculating the amount of the section 1248 (f) dividend recognized by DT as a result of its deemed sale of the block of CFCT1 stock, the enhanced earnings and profits attributable to the block are calculated under paragraph (g)(3) of this section in the table below:

	CFCT1	CFCT2
	(A)	(B)
1. Line 3 *Example (5)*	$100	($65)
2. Multiply line 1(B) by 80/100	.....	(52)
3. Enhanced earnings and profits attributable to the block (sum of lines 1(A) and 2(B)	48	.....

(h) *Treatment of gain in deemed sale of assets as income effectively connected with the conduct of a trade or business within the United States and as from sources within the United States*—(1) *Foreign target.* If, during the measurement period, more than 50 percent of the gross income derived by old FT from an item of property is effectively connected with the conduct of a trade or business within the United States, then the gain that old FT would recognize with respect to that item of property in the deemed sale of assets under section 338(a)(1) if it were a domestic target is treated—

(i) As income that is effectively connected with the conduct of a trade or business within the United States and

(ii) As income from sources within the United States.

(2) *Domestic target.* If, during the measurement period, more than 50 percent of the gross income derived by old DT from an item of property is treated as income from sources within the United States, then the gain that old DT recognizes with respect to that item of property in the deemed sale of assets under section 338(a)(1) is treated as income from sources within the United States.

(3) *Measurement period.* The "measurement period" is the 3-year period ending with the close of the taxable year that precedes old target's final taxable year (or so much of that 3-year period as that target held the particular item of property).

(4) *No inference regarding transactions not described.* No inference should be drawn regarding either the source of or the United States tax with respect to gain arising in the deemed sale of property not described in paragraph (h) (1) or (2) of this section.

(i) [Reserved]

(j) *Transitional rules for corporations and stock described in section 338(h)(6)(B)*—(1) *Transitional elective exclusion from target affiliate status.* If P files an express election for any original target, then, solely for purposes of the stock consistency rule of section 338(f)(1), P also may elect (in the manner prescribed in paragraph (j)(8) of this section) to exclude some or all of the transitional target affiliates from the status of target affiliate ("transitional exclusion election"). If a transitional exclusion election is not made, then none of the transitional target affiliates may be excluded from the status of a target affiliate. A Section 338 election cannot be made for any transitional target affiliate that is subject to a transitional exclusion election.

(2) *Transitional target affiliate*—(i) *General rule.* A "transitional target affiliate" is any corporation described in section 338(h)(6)(B)(i) that is acquired on or before March 15, 1986, and that, absent section 338(h)(6)(B), would be subject to a deemed election under section 338(f)(1) by reason of the express election for the original target. (Under the second condition of paragraph (c)(2)(ii) of this section, status as a transitional target affiliate precludes status as an excludible foreign target affiliate.)

(ii) *Acquired on or before March 15, 1986.* A corporation is considered acquired on or before March 15, 1986, if

its acquisition date (or hypothetical acquisition date) occurs on or before March 15, 1986, or after that date but pursuant to a contract of sale that is binding on both the acquiring P group member and the seller as of February 19, 1986. A corporation that is not considered acquired on or before March 15, 1986, is considered acquired after that date.

(iii) *Hypothetical acquisition date of transitional target affiliate.* If the acquisition date of a transitional target affiliate actually would occur only if the transitional exclusion election were not made (*i.e.*, by reason of the operation of section 338(h)(3)(B) and (f)(1)), then that hypothetical acquisition date is treated as the acquisition date for the purposes of applying this subparagraph (2).

(3) *Special rules for certain original targets described in section 338(h)(6)(B)(i)*—(i) *General rule.* If the original target is a transitional excludible original target, then the following consequences apply:

(A) An express election may be made for the transitional excludible original target or for any qualifying target affiliate.

(B) Only the corporation for which the express election is made is deemed to be the original target.

(C) An express election for a qualifying target affiliate is valid only if a transitional exclusion election also is made for the following corporations (which are treated as transitional target affiliates under these circumstances): (*1*) the transitional excludible original target and (*2*) each qualifying target affiliate with an acquisition date occurring before the acquisition date of the qualifying target affiliate for which the express election is made.

(ii) *Transitional excludible original target.* A "transitional excludible original target" is a corporation described in section 338(h)(6)(B)(i) that is an original target acquired on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section). For purposes of applying § 1.338–4T(b)(4) (definition of original target) to this subdivision (ii), the section 338 election referred to therein is considered one with respect to which a transitional exclusion election is not made.

(iii) *Qualifying target affiliate*—(A) *General rule.* A corporation is a qualifying target affiliate if it is a potential qualifying target affiliate that is not an excepted target. A corporation is a potential qualifying target affiliate if (*1*) it is a target even in the absence of a section 338 election and (*2*) it would be subject to a deemed election under section 338(f)(1) if an express election (and no transitional exclusion election) were made for the transitional excludible original target.

(B) *Excepted target.* A potential qualifying target affiliate is an excepted target and thus is not a qualifying target affiliate if its acquisition date occurs after the acquisition date of a potential qualifying target affiliate that is not a transitional target affiliate. The determination of transitional target affiliate status is made without regard to the provisions of this subparagraph (3).

(iv) *Coordination with protective carryover election.* For guidance in a case in which P wishes to make a protective carryover election under § 1.338–4T(f)(6) instead of an express election, see paragraph (c)(2)(iv)(F) of this section.

(4) *Examples.* The provisions of paragraph (j) (1) through (3) of this section may be illustrated by the following examples.

Example (1). On December 31, 1984, P purchases from DS all of the stock of DT in a qualified stock purchase. DT holds all of the stock of FT1, FT1 holds all of the stock of FT2, and FT2 holds all of the stock of FT3. FT1, FT2, and FT3 are transitional target affiliates, since an express election from DT would cause deemed elections under section 338(f)(1) for FT1, FT2, and FT3, and since each of those three corporations is acquired on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section). Accordingly, P may elect to exclude FT1, FT2, and/or FT3 from the status of a target affiliate in a transitional exclusion election filed in connection with an express election for DT. Note that a transitional exclusion election for FT1 need not also specify FT2 and FT3, since the benefit of excluding FT1 from the status of a target affiliate (avoidance of a section 338 election for FT1) automatically will apply to FT2 and FT3. (A qualified stock purchase and section 338 election cannot occur for FT2 unless FT1 is deemed to sell its FT2 stock pursuant to an election under section 338. Similarly, a qualified stock purchase and section 338 election cannot occur for FT3 unless FT2 is deemed to sell its FT3 stock pursuant to an election under section 338. See section 338(a)(1) and (h)(3)(B).)

Example (2). (i) Assume the same facts as in Example (1), except that DT is FT. Assume also that P acquires the stock of FT4, FT5, DT6 and FT7 from DS in qualified stock purchases on January 31, 1985, April 1, 1985, June 1, 1985, and July 1, 1985, respectively. Assume in addition that FT4, FT5, DT6, and FT7 were members of the DS group on December 31, 1984. Finally, assume that DT6, is a domestic corporation that is not described in section 338(h)(6)(B)(i).

(ii) FT is a transitional excludible original target within the meaning of paragraph (j)(3)(ii) of this section. FT1, FT2, and FT3 are not qualifying target affiliates because they are not targets in the absence of a section 338 election. See paragraph (j)(3)(iii)(A)(*1*) of this section. (Such corporations would be targets only by reason of the deemed purchase of stock under section 338(a)(1). See section 338(h)(3)(B).) FT4, FT5, and DT6 are qualifying target affiliates within the meaning of paragraph (j)(3)(iii) of this section, since (A) they are targets even in the absence of a section 338 election, (B) they would be subject to deemed elections under section 338(f)(1) if an express election (and no transitional exclusion election) were made for the transitional excludible original target, and (C) they are not excepted targets. FT7 is not a qualifying target affiliate because it is an excepted target, *i.e.*, its acquisition date occurs after the acquisition date of DT6, a qualifying target affiliate that would not be a transitional target affiliate if an express election were made for FT. See paragraph (j)(3)(iii)(B) of this section.

(iii) Under these facts, an express election may be made for FT or, pursuant to paragraph (j) (3) of this section, FT4, FT5, or DT6. The express election cannot be made for FT7, since it is not a qualifying target affiliate. If, for example, P wishes to make an express election for FT4, then that express election will be valid only if a transitional exclusion election is made for FT, the transitional excludible original target that is treated as a transitional target affiliate under these circumstances. If the express election is made for FT4, then, at P's option, a transitional exclusion election may be made for FT5 and/or FT7. The transitional exclusion election cannot be made for DT6, since DT6 is not a transitional target affiliate. If P wishes to make an express election for FT5, then that express election will be valid only if transitional exclusion elections are made for FT and FT4. At P's option under these circumstances, a transitional exclusion election may be made for FT7.

(5) *Relationship between transitional exclusion election and regular exclusion election—(i) In general.* A transitional exclusion election applies only to transitional target affiliates. If a transitional exclusion election is or could be made in connection with an express election, then, in the absence of an invalidation event (within the meaning of paragraph (c)(2)(iii) of this section), a separate regular exclusion election also may be made for all of the excludible foreign target affiliates.

(ii) *Special rule for application of regular exclusion election.* Under paragraph (c)(2)(i) of this section, a domestic original target is a prerequisite for a regular exclusion election. If the express election is made for a foreign original target with an acquisition date that occurs on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section), however, that foreign corporation will be treated as if it were a domestic original target for purposes of applying such paragraph (c)(2)(i).

(iii) *Limitation on application of paragraph (c)(3) of this section.* The special basis rules of paragraph (c)(3) of

this section do not apply if the acquisition date of the domestic target occurs on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section).

(iv) *Limitation on application of paragraph (c)(4) of this section.* If the acquisition date of the actual (as opposed to a deemed) original target occurs on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section) and if a valid regular exclusion election is made, then paragraph (c)(4) of this section (relating to carryover basis in certain asset acquisitions) applies only to asset acquisitions from excludible foreign target affiliates and not from nontarget foreign target affiliates. For transitional asset consistency rules, see paragraph (j)(6) of this section.

(v) *Overlap between paragraphs (c)(2)(iv) and (j)(3) of this section*—(A) *In general.* This subdivision (v) provides rules for cases in which there is an overlap between the provisions of paragraphs (c)(2)(iv) and (j)(3) of this section. Those provisions provide prospective and transitional rules, respectively, for making an express election for a corporation other than the original target. In a case in which there are both transitional target affiliates and excludible foreign target affiliates, an express election may be made for (A) the transitional excludible original target, (B) a qualifying target affiliate pursuant to paragraph (j)(3) of this section, or (C) the qualifying domestic target affiliate pursuant to paragraph (c)(2)(iv) of this section, as modified by this subdivision (v).

(B) *Illustrative factual situation.* The rules of this subdivision (v) are set out in the context of the following factual situation: Assume that on April 1, 1985, FS owns all of the stock of FT1, FT2, FT3, FT4, and DT5. Assume in addition that P acquires the stock of those corporations in qualified stock purchases from FS on the dates indicated in the following table (the post-March 15, 1986, acquisitions are not made pursuant to a binding contract in effect on February 19, 1986:

4/1/85	10/1/85	4/1/86	7/1/86	8/1/86
FT1	FT2	FT3	FT4	DT5

(C) *Express election for transitional excludible original target or qualifying target affiliate.* Under paragraph (j)(3) of this section, an express election may be made for FT1, the transitional excludible original target, or for FT2 or FT3, both of which are qualifying target affiliates. An express election is not permitted under paragraph (j)(3) of this section for FT4 or DT5, since those corporations are excepted targets within the meaning of paragraph (j)(3)(iii)(B) of this section. FT4 and DT5 are excepted targets because their acquisition dates occur after the acquisition date of a potential qualifying target affiliate, FT3, that is not a transitional target affiliate. An express election for FT3, for example, is valid only if transitional exclusion elections also are made for FT1 and FT2, which are considered transitional target affiliates under these circumstances. See paragraph (j)(3)(i)(C) of this section.

(D) *Express election for qualifying domestic target affiliate.* Because one of the qualifying target affiliates for which an express election could be made under paragraph (j)(3) of this section (FT3), is a foreign target acquired after March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section), this subdivision (v) also permits P to make the express election for DT5 (as the qualifying domestic target affiliate) rather than for FT1, FT2, or FT3 if three conditions are satisfied. The first condition is that DT5 must be a corporation that would have been a qualifying domestic target affiliate under paragraph (c)(2)(iv)(C) of this section had FT3 (*i.e.*, a foreign corporation that is a qualifying target affiliate acquired after March 15, 1986) been the actual original target. The second condition is that a valid regular exclusion election under paragraph (c)(2)(iv) of this section must be made in connection with the express election for DT5 in the same manner as if FT3 were the actual original target. (Pursuant to paragraph (c)(2)(iv) of this section, that regular exclusion election applies to FT3 and FT4.) The third condition is that transitional exclusion elections must be made as if the express election had been made for FT3, *i.e.*, transitional exclusion elections must be made for FT1 and FT2. See paragraph (j)(3)(i)(C) of this section.

(E) *Express election for FT3 bars regular exclusion election.* An express election under paragraph (j)(3) of this section for FT3, a foreign corporation acquired after March 15, 1986, bars a regular exclusion election. (Subject to the transitional rule of paragraph (j)(5)(ii) of this section, which is inapplicable on these facts, a regular exclusion election cannot be made if the original target for which the express election is made is a foreign corporation.) Thus, FT4 could not be excluded from the status of a target affiliate if an express election were made for FT3. If, however, an express election under paragraph (j)(3) of this section is made for FT2, a foreign corporation acquired on or before March 15, 1986, then the transitional rule of paragraph (j)(5)(ii) of this section applies and a regular exclusion election may be made (and will not be invalidated retroactively) unless an invalidation event under paragraph (c)(2)(iii) of this section occurs with respect to one of the excludible foreign target affiliates, *i.e.*, FT3 or FT4.

(F) *FT3 is DT3.* If FT3 were DT3, then (whether or not DT3 was described in section 338(h)(6)(B)(i)) an express election could be made only for FT1 or, pursuant to paragraph (j)(3) of this section, FT2 or DT3. An express election could not be made for DT5 on these facts because none of the qualifying target affiliates is a foreign corporation acquired after March 15, 1986. See paragraph (j)(5)(v)(D) of this section.

(G) *FT1 is DT1.* If FT1 were DT1, a domestic corporation not described in section 338(h)(6)(B)(i), then the express election could be made only for DT1 since the original target would not be a transitional excludible original target under paragraph (j)(3)(ii) of this section.

(H) *FT2 is DT2.* If FT2 were DT2, a domestic corporation not described in section 338(h)(6)(B)(i), then the express election could be made only for FT1 or DT2, since no corporation acquired after the acquisition date of DT2 is a qualifying target affiliate. See paragraph (j)(3)(iii)(B) of this section.

(I) *Effect of invalidation event after express election filed for DT5.* If an invalidation event occurs after an express election is made for DT5 (*e.g.*, the P group acquires an excludible foreign target affiliate that holds stock in a domestic corporation under the circumstances described in paragraph (c)(2)(iii)(C) of this section), then, subject to the barred target rule of paragraph (c)(2)(iii)(D) of this section, FT3 and FT4 will be subject to deemed elections under section 338(f)(1) by reason of the express election for DT5. See paragraph (c)(2)(iv)(E) of this section. FT1 and FT2 will not be affected by the invalidation event since they are not excludible foreign target affiliates. Accordingly, FT1 and FT2 will not be subject to deemed elections under section 338(f)(1) by reason of the invalidation event.

(vi) *Examples.* The provisions of this subparagraph (5) may be illustrated by the following examples.

Example (1). (i) Assume the same facts as in Example (2) of paragraph (j)(4) of this section, except that the acquisition dates of FT5, DT6, and FT7 occur on June 1, 1985, April 1, 1986, and May 1, 1986, respectively. Assume in addition that a binding contract to acquire DT6 and FT7 is not in effect on February 19, 1986.

(ii) The result is the same as in Example (2) of paragraph (j)(4) of this section, except that FT7 is not a transitional target affiliate and therefore cannot be excluded from the status of a target affiliate pursuant to a transitional exclusion election. In addition, FT7 cannot be excluded from the status of a target affiliate pursuant to a regular exclusion election made in connection with an express election for FT, FT4, FT5, or DT6. A regular exclusion election cannot be made (or is retroactively invalidated) because P's acquisition of FT7 is an invalidation event under paragraph (c)(2)(iii)(B) of this section. (That acquisition is an invalidation event because FT7 was a controlled foreign corporation during the relevant period.)

Example (2). Assume the same facts as in Example (1), except that DS is FS. Assume further that FS is not a controlled foreign corporation and that FT7 does not hold stock of a domestic corporation under the circumstances described in paragraph (c)(2)(iii)(C) of this section. Under these facts, FT7 is not a controlled foreign corporation during the relevant period and P's direct acquisition of its stock is not an invalidation event. Accordingly, the results are the same as in Example (1), except that a regular exclusion election (applicable to FT7) may be made in connection with the express election for FT, FT4, FT5, or DT6.

(6) *Transitional asset consistency rules for corporations described in section 338(h)(6)(B)(i)*—(i) *General rule.* A transitional asset acquisition from a corporation that is described in section 338(h)(6)(B)(i) and that is not an excluded transferor shall in no case be treated as a tainted asset acquisition (within the meaning of § 1.338–4T(f)(6)(i)) with respect to any target. Accordingly, such an asset acquisition cannot cause an affirmative action carryover election and will not be subject to an otherwise applicable affirmative action or protective carryover election.

(ii) *Definitions*—(A) *Transitional asset acquisition.* A "transitional asset acquisition" is any asset acquisition made by P (or another member of the P group) on or before March 15, 1986.

(B) *Acquisition made on or before March 15, 1986.* An asset acquisition is considered made on or before March 15, 1986, if the asset actually is acquired on or before March 15, 1986, or if it is acquired after that date but pursuant to a contract of sale that is binding on both the acquiring P group member and the transferor as of February 19, 1986.

(C) *Excluded transferor.* An "excluded transferor" is a corporation that is either (*1*) a transitional target affiliate subject to a transitional exclusion election made in connection with an express election or (*2*) any other corporation that, but for the transitional exclusion election, would be subject to a deemed election under section 338(f)(1) by reason of the express election.

(iii) *Special asset consistency rule for acquisition for excluded transferor*—(A) *General rule.* A P group member must take a carryover basis in an asset acquired from an excluded transferor as if the asset acquisition were subject to an affirmative action carryover election if, in the absence of an express election, the asset acquisition would be considered a tainted asset acquisition (as defined in § 1.338–4T(f)(6)(i)) with respect to any relevant target (as defined in paragraph(c)(4)(iii) of this section). For guidance on the affirmative action carryover election, see § 1.338–4T (f) (6). Except as provided in this subdivision (iii) or in paragraph (c)(4) of this section (which contains a similar prospective rule), no asset acquisition shall be treated as a tainted asset acquisition if an express election is made.

(B) *Deemed election not imposed.* In no event shall the District Director impose a deemed election under section 338(e)(1) as a result of an asset acquisition from any excluded transferor.

(iv) *Examples.* The provisions of this subparagraph (6) may be illustrated by the following examples.

Example (1). Assume the same facts as in Example (1) of paragraph (j)(4) of this section. Assume in addition that P makes a protective carryover election for DT in lieu of an express election,and that on January 1, 1985, P purchases for cash an asset from FT1, DT's wholly owned subsidiary. Because the asset is acquired in a transitional asset acquisition, it will in no case be considered a tainted asset acquisition subject to the protective carryover election. Accordingly, P's basis in the asset will be determined under section 1012. (The result is the same if P does not make a protective carryover election.)

Example (2). Assume that P makes an express election for DT under the facts of Example (1) of paragraph (j)(4) of this section. Assume in addition that P makes a transitional exclusion election for FT2 in that express election, and that on January 1, 1985, P purchases an asset from FT2 in a transaction that would be a tainted asset acquisition if an express election were not made. Because FT2 is an excluded transferor within the meaning of paragraph (j)(6)(ii)(C) of this section, P must take a carryover basis in the acquired asset as if the acquisition were subject to an affirmative action carrover, election.

Example (3). Assume the same facts as in Example (2), except that the asset is acquired from FT3. Although a transitional exclusion election was not made for FT3, FT3 is a corporation that would have been subject to a deemed election under section 338(f)(1) by reason of the express election for DT had the transitional exclusion election for FT2 not been made. Thus, FT3 is an excluded transferor and the result is the same as in Example (2).

Example (4). Assume the same facts as in Example (2), except that the asset is acquired from FT1. FT1, a transitional target affiliate that is not subject to the transitional exclusion election, is not an excluded transferor. (FT1 is subject to a deemed election under section 338(f)(1) by reason of the express election for DT.) Accordingly, P does not take a carrover basis in the asset under paragraph (j)(6) (iii) of this section but rather takes a basis determined under section 1012.

(7) *Treatment of stock described in section 338(h)(6)(B)(ii)—(1) Transitional stock exclusion election.* If P makes a transitional stock exclusion election in the manner prescribed in paragraph (j)(8) of this section for one or more eligible targets, then the following stock held by such an eligible target at the close of its acquisition date ("affected stock") shall be excluded from the operation of section 338:

(A) All section 338(h)(6)(B)(ii) stock other than stock in a transitional target affiliate (as defined in paragraph (j)(2) of this section) and

(B) All section 338(h)(6)(B)(ii) stock that is stock in a transitional target affiliate for which a transitional exclusion election is made under paragraph (j)(1) of this section.

(ii) *Section 338(h)(6)(B)(ii) stock.* "Section 338(h)(6)(B)(ii) stock" is stock in a foreign corporation or a domestic corporation that is a DISC or that is described in section 1248(e), whether or not the corporation is a target or a target affiliate.

(iii) *Eligible target.* An "eligible target" is a target that is subject to a deemed election under section 338(f)(1) and which is acquired on or before February 19, 1986 or pursuant to a binding contract in effect on that date.

(iv) *Effect of exclusion from operation of section 338.* If a transitional stock exclusion election is made for an eligible target, then—

(A) that eligible target is not deemed under section 338(a) to sell and purchase the affected stock it holds at the close of its acquisition date and

(B) that eligible target's basis as new target in that affected stock is the same as its basis in that stock as old target immediately before its deemed sale of

assets under section 338(a)(1) ("carryover basis amount").

(v) *Effect of difference between carryover basis amount and regular basis amount.* If the carryover basis amount for affected stock held by an eligible target (as new eligible target) is less than the basis amount that, absent paragraph (j)(7)(iv) of this section, would be allocable to that stock ("regular basis amount"), then the difference is eliminated. Whether or not the carryover basis amount is less than or exceeds the regular basis amount, however, that regular basis amount is treated as the total amount allocated to the affected stock for purposes of allocating new eligible target's adjusted grossed-up basis among the other assets of new eligible target.

(vi) *Tacking of old eligible target's holding period.* If a transitional stock exclusion election is made for an eligible target and if, subsequent to its acquisition date, the eligible target disposes of affected stock, then, for purposes of applying section 1248 to that disposition, the holding period of new eligible target for that affected stock includes the holding period of old eligible target for that stock.

(vii) *Examples.* The provisions of this paragraph (j)(7) may be illustrated by the following examples. In each example, assume that all of the corporations are calendar year corporations.

Example (1). On December 31, 1984, P purchases all of the stock of DT from DS in a qualified stock purchase and makes an express election for DT. DT holds 20 of the 100 shares of FX's only class of outstanding stock, and DS holds the remaining 80 shares. (Since all of the stock of FX is held by U.S. shareholders, FX is a controlled foreign corporation.) Although the stock of FX is affected stock within the meaning of paragraph (j)(7)(i) of this section and although the acquisition date of DT occurs on or before March 15, 1986, a transitional stock exclusion election applicable to DT cannot be made. An original target (*i.e.*, a target that is not subject to a deemed election under section 338(f)(1)) cannot be an eligible target. See paragraph (j)(7)(iii) of this section.

Example (2). (i) Assume the same facts as in Example (1), except that DT's wholly owned subsidiary, DT1, holds the 20 shares of FX stock. Assume in addition that old DT1's basis in that FX stock is $70 and that, absent paragraph (j)(7)(iv) of this section, new DT1's basis in the FX stock would be $100. Finally assume that DT1 sells the 20 shares of FX stock on January 15, 1985, for $90.

(ii) A transitional stock exclusion election applicable to DT1 (and thus to the FX stock held by DT1) may be made, since DT1 is an eligible target. DT1 is an eligible target because its acquisition date occurs on or before March 15, 1986, and it is subject to a deemed election under section 338 (f)(1) by reason of P's express election for DT. If a transitional stock exclusion election is made for DT1, then old DT1 will not include in its gross income a section 1248(f) dividend as a result of its deemed sale of assets, since it will not be deemed to sell the FX stock it holds. See paragraph (j)(7)(iv)(A) of this section. In addition, new DT1's basis in FX stock (*e.g.*, for purposes of DT1's sale of that FX stock on January 15, 1985) shall be the same as old DT1's basis in such stock immediately before DT1's deemed sale of assets, *i.e.*, $70. See paragraph (j)(7)(iv)(B) of this section. For purposes of allocating new DT1's adjusted grossed-up basis among the other assets of new DT1, however, the amount that, absent this paragraph (j)(7), would have been allocated to the FX stock held by DT1, (*i.e.*, $100) shall be deemed to be the amount actually allocated to that stock.

(iii) Accordingly, DT1's gain on the January 15, 1985, sale of FX stock is $20, *i.e.*, the difference between the selling price ($90) and DT1's carryover basis in the FX stock ($70). For purposes of applying section 1248 to that sale, new DT1's holding period in the stock of FX includes old DT1's holding period. Thus, the earnings and profits of FX that accrued during the period while old DT1 held the FX stock must be taken into account under the principles of section 1248 in determining new DT1's section 1248 divided (if any) on the January 15, 1985, sale.

Example (3). Assume the same facts as in Example (2), except that the 80 shares of FX stock are held by DT2, another wholly owned subsidiary of DT, rather than by DS. Thus, DT1 and DT2 are eligible targets and FX is a transitional target affiliate. Accordingly, a transitional stock exclusion election made for DT1 and/or DT2 will not apply to the stock of FX unless a transitional exclusion election is made for FX.

Example (4). Assume the same facts as in Example (2), except that the 80 shares of FX stock are held by an individual. Accordingly, FX is not a target affiliate of DT or DT1. The result is the same as in *Example (2)*, since affected stock need not be stock in a target affiliate.

(8) *Transitional section 338(h)(6)(B) election procedures*—(i) *General rule.* This subparagraph (8) prescribes procedures for making the transitional exclusion election and the transitional stock exclusion election under paragraph (j) (1) and (7) of this section, respectively ("transitional elections"). The transitional elections are made by attaching a transitional section 338(h)(6)(B) statement to the express election (Form 8023) filed for the original target (including a qualifying target affiliate treated as the original target under paragraph (j)(3) of this section). The transitional section 338(h)(6)(B) statement, once filed, is treated as an integral part of the Form 8023 (*e.g.*, for purposes of § 1.338–1T(e)(2)(i) (requiring that the Form 8023 be attached to certain returns)). The transitional elections are irrevocable.

(ii) *Special procedure if express election filed on or before March 15, 1986.* If a transitional section 338(h)(6)(B) statement is not attached to an express election filed on or before March 15, 1986, a transitional election(s) nonetheless may be made if, on or before that date, a copy of the previously filed express election, with a copy of the transitional section 338(h)(6)(B) statement attached, is filed with the Internal Revenue Service Center(s) with which the express election is required to be filed under § 1.338–1T (c) and (d).

(iii) *Amendment procedure if transitional statement filed on or before March 15, 1986.* A transitional section 338(h)(6)(B) statement filed on or before March 15, 1986, may be amended on or before that date for two purposes. First, if only one transitional election was made in the previously filed statement, then an amended statement may be made to include both transitional elections. Second, the previously filed statement may be amended to make additional corporations subject to a transitional election already made. The amended statement is filed pursuant to the procedure described in paragraph (j)(8)(ii) of this section, and a copy of the previously filed section 338(h)(6)(B) statement must be attached.

(iv) *Acquisition date of transitional target affiliate or eligible target occurs after transitional section 338(h)(6)(B) statement filed.* A transitional target affiliate or an eligible target will be subject to a transitional exclusion election or transitional stock exclusion election, respectively, only if such a corporation is named in the transitional section 338(h)(6)(B) statement (including an amended statement), notwithstanding that the acquisition date of such a corporation occurs after that statement is filed. The failure of the P group to actually acquire a corporation named in the transitional section 338(h)(6)(B) statement pursuant to this subdivision (iv) shall have no effect on the validity of that statement.

(v) *Contents of transitional section 338(h)(6)(B) statement.* The transitional section 338(h)(6)(B) statement must—

(A) Be identified prominently as a transitional exclusion election under § 1.338–5T(j)(1), as a transitional stock exclusion election under § 1.338–5T(j)(7), or both.

(B) Where applicable, indicate that it is an amended statement.

(C) Contain the following declaration (or a substantially similar declaration) if a transitional exclusion election is made: "THE TRANSITIONAL EXCLUSION ELECTION PERMITTED

BY § 1.338–5T(j)(1) IS HEREBY MADE FOR THE TRANSITIONAL TARGET AFFILIATES IDENTIFIED HEREIN".

(D) Contain the following declaration (or a substantially similar declaration) if a transitional stock exclusion election is made: "THE TRANSITIONAL STOCK EXCLUSION ELECTION PERMITTED BY § 1.338–5T(j)(7) IS HEREBY MADE FOR THE ELIGIBLE TARGETS IDENTIFIED HEREIN".

(E) For each of the following corporations contain the name, address, employer identification number (if any), and, for a foreign corporation, the country (and, if relevant, the lesser political subdivision) under the laws of which it is organized. The following corporations are: (*1*) Each transitional target affiliate for which a transitional exclusion election is made, with corporations included pursuant to paragraph (j)(8)(iv) of this section so identified (such as by a footnote system), (*2*) each eligible target for which a transitional stock exclusion election is made, with corporations included pursuant to paragraph (j)(8)(iv) of this section so identified, and (*3*) if determinable as of the day of filing, each other corporation that would be subject to the express election absent the transitional elections.

(F) Be signed (in the manner prescribed in § 1.338–1T(d)(1)(v)) by a person authorized to act on behalf of P.

Par. 3. Section 1.338–1T is amended as follows:

1. Paragraph (b) is amended by adding a new paragraph (b)(9) to read as set forth below.

2. Paragraph (c) is revised to read as set forth below.

3. Paragraph (d) is amended by—

a. Revising the heading to read as set forth below.

b. Removing, from the first sentence of paragraph (d)(1), the words "statement of election under section 338" and by adding in their place the words "statement of section 338 election".

c. Removing, from the third sentence of paragraph (d)(1), the words "statement of election" and by adding in their place the words "statement of section 338 election".

d. Removing from paragraph (d)(1)(i) the word "target" and by adding in its place the words "original target".

e. Removing the word "and" from paragraph (d)(1)(iv), redesignating paragraph (d)(1)(v) as paragraph (d)(1)(vi), and adding a new paragraph (d)(1)(v) to read as set forth below.

f. Revising paragraph (d)(2) to read as set forth below.

g. Removing, from each place they appear in paragraph (d)(3), the words "statement of election" and by adding in their place the words "statement of section 338 election".

4. Paragraph (e) is amended by—

a. Revising paragraph (e)(1) to read as set forth below.

b. Revising paragraph (e)(2) (i), (ii), and (iii) to read as set forth below.

c. Removing, from the first sentence of paragraph (e)(2)(iv), the words "statement of election" and by adding in their place the words "statement of section 338 election".

d. Adding a new paragraph (e)(2)(v) to read as set forth below.

e. Revising paragraph (e)(3) to read as set forth below.

5. Paragraph (j) is revised to read as set forth below.

6. Paragraph (k) is amended by—

a. Revising paragraph (k)(1) to read as set forth below.

b. Removing from paragraph (k)(2)(i) the words "statement of election" and by adding in their place the words "statement of section 338 election".

c. Revising paragraph (k)(2)(v) to read as set forth below.

d. Removing paragraph (k)(3)(iii).

e. Revising the heading of paragraph (k)(4) to read as set forth below.

f. Removing from each place they appear in paragraph (k)(4), the words "statement of election" and by adding in their place the words "statement of section 338 election".

g. Revising paragraph (k)(5) to read as set forth below.

h. Removing paragraph (k)(6) and by redesignating paragraph (k)(7) as paragraph (k)(6).

i. Revising subdivisions (i) and (ii) of redesignated paragraph (k)(6) to read as set forth below.

j. Adding a new paragraph (k)(7) to read as set forth below.

§ 1.338–1T Elections under section 338(g) of the Internal Revenue Code of 1954 (temporary).

* * * * *

(b) *Definitions*—* * *

(9) *Cross-reference.* The definitions in § 1.338–4T (as modified by § 1.338–5T(b)(2)) also apply for purposes of this section.

(c) *Time and manner of making election.* The purchasing corporation makes an election under section 338(g) for the original target only by filing, not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs (or if later, March 15, 1986), a statement of section 338 election with the Internal Revenue Service Center with which it files its annual income tax return. If the statement of section 338 election for the original target will cause section 338(a) to apply to other corporations ("affected targets") by reason of section 338(f)(1), a separate statement of section 338 election need not be filed for those affected targets. See paragraph (e)(1) of this section for requirement to attach a schedule containing information relating to the original target and the affected targets. See paragraph (k)(7) of this section for a required notice to the domestic shareholders of foreign targets in certain cases. See also paragraph (k) of this section generally for other special rules applicable to certain foreign corporations and DISCs.

(d) *Statement of section 338 election*—(1) * * *

(v) For elections filed after February 19, 1986, specify (if the purchasing corporation or the original target is a foreign corporation) the country (and, if relevant, the lesser political subdivision) under the laws of which it is organized, and

(2) *Signature requirement if common parent is the agent of purchasing corporation.* If the common parent of an affiliated group filing consolidated returns is the agent of the purchasing corporation under § 1.1502–77, then the person authorized to sign the statement of section 338 election pursuant to paragraph (d)(1)(v) of this section is the person authorized to act on behalf of that common parent.

* * * * *

(e) *Schedule; attachments to target returns*—(1) *Schedule of information relating to certain corporations and persons*—(i) *Required data.* A schedule providing the information specified in this paragraph (e)(1)(i) ("required data") must be attached to the statement of section 338 election. That schedule must satisfy the following requirements:

(A) It must contain the name, address, and employer identification number each includible affected target, *i.e.*, each corporation that, as of the day the statement of section 338 election is filed ("day of filing"), is an affected target subject to that election by reason of section 338(f)(1). For each includible affected target that is a foreign corporation, it must also contain the country (and, if relevant, the lesser political subdivision) under the laws of which it is organized.

(B) It must disclose the fair market value of the consideration paid by the purchasing corporation for the stock of each directly acquired target, *i.e.*, (*1*) the original target, (*2*) each includible affected target, (*3*) each excludible foreign target affiliate identified under paragraph (e)(1)(i)(F) of this section, (*4*) each transitional target affiliate (that is identified in an attached transitional exclusion election pursuant to § 1.338–

5T(j)(8) and that is actually acquired on or before the day of filing), and (5) each other corporation that, as of the day of filing, would be a target but for the transitional exclusion election (if any). For purposes of this subdivision (i), a directly acquired target does not include a corporation the qualified stock purchase of which occurs solely by reason of section 338(a)(2) and (h)(3)(B) (or would so occur if a regular or transitional exclusion election were not made) ("indirectly acquired corporation").

(C) It must identify the portion of the consideration paid for the stock of each directly acquired target that is represented by the following components: (1) Cash, (2) purchase money debt, and (3) other components of consideration (with each such other component separately stated).

(D) It must disclose the liabilities (with any tax liability resulting from the deemed sale of assets under section 338(a)(1) separately stated), as of the close of the acquisition date (or as of the close of the day that would be the acquisition date if a regular or transitional exclusion election were not made), of each of the corporations described in paragraph (e)(1)(i)(B) of this section and of each other corporation that would be so described but for the exception therein for indirectly acquired corporations.

(E) If an election under section 338(h)(10) is made, it must clearly identify (such as by a footnote system) each corporation listed on the schedule that is subject to that election, including corporations subject to deemed section 338(h)(10) elections under § 1.338(h)(10)–1T(h).

(F) If a regular exclusion election under § 1.338–5T(c)(2) is made, the schedule must contain the name, address, and employer identification number (if any) of, and country (and, if relevant, the lesser the political subdivision) under the laws of which is organized, each corporation that, as of the day the schedule is filed, is an excludible foreign target affiliate, with each such corporation clearly identified (such as by a footnote system) as an excludible foreign target affiliate subject to a regular exclusion election.

(G) It must contain the name, address, and identifying number (if available) of each U.S. person to whom notice of the election must be sent as of the day the statement of section 338 election is filed (see paragraph (k)(7) of this section).

(ii) *Corrective statements*—(A) *Transitional rule.* If a statement of section 338 election filed on or before March 15, 1986, does not include the schedule with all of the required data, the requirements of paragraph (e)(1)(i) of this section will be satisfied if, on or before March 15, 1986, a corrective statement in the form of the schedule (containing all of the required data, and with a copy of the previously filed statement of section 338 election attached) is filed with the Internal Revenue Service Center(s) with which the statement of section 338 election is required to be filed under paragraphs (c) and (d) of this section.

(B) *Regular exclusion election invalidated.* If, subsequent to the making of a regular exclusion election, that exclusion election is invalidated by reason of an invalidation event described in § 1.338–5T(c)(2)(iii) and if, by reason of the invalidation event, a previously filed schedule under this subparagraph (1) incorrectly identifies certain corporations as excludible foreign target affiliates subject to a regular exclusion election, then the requirements of paragraph (e)(1)(i) of this section will be satisfied if, on or before the later of March 15, 1986, or the 120th day after the date of the invalidation event, a corrective statement in the form of an amended schedule (along with a copy of the previously filed statement of section 338 election) is filed with the Internal Revenue Service Center(s) with which the statement of section 338 election is required to be filed under paragraphs (c) and (d) of this section. (The invalidated regular exclusion statement need not be attached.) The revised schedule must clearly identify (such as by a footnote system) the corporations that are no longer treated as excludible foreign target affiliates subject to a regular exclusion election. The following declaration (or a substantially similar declaration) must be set forth on the amended schedule: "THIS SCHEDULE IS AMENDED BY REASON OF THE INVALIDATION UNDER § 1.338–5T(c)(2)(iii) OF A REGULAR EXCLUSION ELECTION."

(C) *Schedule must be updated.* The schedule filed as a corrective statement under this subdivision (ii) must contain the required data described in paragraph (e)(1)(i) of this section for each corporation subject to the statement of section 338 election as of the day the schedule is filed.

(2) *Attachments to target returns; additional filings with certain Service Centers*—(i) *Attachments.* The items described in this subdivision (i) ("required items") must be attached to old target's final return and to the first return of new target. For purposes of this subparagraph (2), the term "target" refers to the original target and each affected target subject to the express election for the original target. The required items are—

(A) A copy of the statement of section 338 election (including a copy of any election made by filing a separate statement in connection with the statement of section 338 election) and

(B) The schedule described in paragraph (e)(1)(i) of this section ("schedule").

(ii) *Corrective statements*—(A) *Transitional rule.* If all of the required items (containing all of the information required to be included in those items) are not attached to a final return of old target or a first return of new target that is filed on or before March 15, 1986, the requirements of paragraph (e)(2)(i) of this section will be satisfied if, on or before that date a corrective statement consisting of all of the required items (containing all of the information required to be included in those items) is filed with the Internal Revenue Service Center(s) with which the returns to which the required items should have been attached were filed.

(B) *Special rule if regular exclusion election invalidated.* If, under the circumstances described in paragraph (e)(1)(ii)(B) of this section (relating to invalidation of regular exclusion election), a previously filed schedule under this paragraph (e)(2) incorrectly identifies certain corporations as excludible foreign target affiliates subject to a regular exclusion election, then the requirements of paragraph (e)(2)(i) of this section will be satisfied only if, on or before the 120th day after the date of the invalidation event, a corrective statement in the form of an amended schedule (containing the information and attachment required by paragraph (e)(1)(ii)(B) of this section) is filed with the Internal Revenue Service Center(s) with which the previously filed schedule was required to be filed.

(iii) *Additional filings with certain Service Centers.* On or before the day on which any return or corrective statement described in paragraph (e)(2)(i) or (ii) of this section is filed, the required items also must be filed with the Internal Revenue Service Centers with which the statement of section 338 election is required to be filed under paragraphs (c) and (d) of this section. If a gain recognition election under section 338(b)(3) is made in connection with the statement of section 338 election (so that a copy of the gain recognition statement ("GRS") under § 1.338–4T(j)(2) is a required item pursuant to paragraph (e)(2)(i)(A) of this section), then, on or before the day specified in the preceding sentence, the required items also must be filed with each other Service Center

with which each affected P group member (determined as of day of filing) files its annual income tax return. For the definition of "affected P group member," see § 1.338–4T(j)(2) *Answer 5* (ii)(A). The required items need not, however, be filed with a Service Center that already has received the identical required items.

* * * * *

(v) *Special rules for returns to which required items must be attached*—(A) *Target subject to section 338(h)(10) election.* If a target is subject to an election under section 338(h)(10), then the required items specified in paragraph (e)(2)(i) of this section are considered filed with the last return of old target if they are attached to the return of the selling consolidated group for the taxable period that includes the acquisition date. For guidance under section 338(h)(10), see § 1.338(h)(10)–1T(d).

(B) *Certain returns filed by U.S. persons.* Each U.S. person to whom the purchasing corporation must provide notice under paragraph (k)(7)(ii)(B) of this section (relating to notice of a section 338 election for a foreign target) must attach the required items specified in paragraph (e)(2)(i) of this section to its income tax return in which it is required to report a section 1248 dividend by reason of its sale of stock in the foreign target to the purchasing corporation.

In addition, each other U.S. person that is required to file an information return (Form 5471) with respect to the foreign target for a relevant taxable year of that foreign target must attach the required items to that return if (*1*) the purchasing corporation must provide notice under paragraph (k)(7)(ii)(A) to that U.S. person or (*2*) that U.S. person is a member of the affiliated group that includes the purchasing corporation. A foreign target's relevant taxable years are its taxable year that includes its acquisition date and its taxable year that includes the first day thereafter. A U.S. person that receives a notice pursuant to paragraph (k)(7)(ii) of this section may assume that the required items received from the purchasing corporation as part of that notice are accurate for purposes of the attachment requirement.

(C) *First return of new foreign target after acquisition date.* If a United States income tax return is not required to be filed for new foreign target's taxable period that includes the first day after its acquisition date, then the required items must be attached to the first United States income tax return filed by that target for a subsequent taxable year.

(3) *Consequence of failure to comply with requirements of paragraph (e) (1) and (2) of this section*—(i) *General rule.* If the requirements of paragraph (e) (1) and (2) of this section or of § 1.338–5T(c)(2)(vii)(B) (requirement of amended returns if regular exclusion election invalidated) are not satisfied with respect to the original target or any affected target, then the waiver rule of paragraph (h)(1) of this section will not apply to any of those targets. Failure to comply with those requirements will not invalidate a statement of section 338 election or any other election under section 338.

(ii) *Exception for certain returns.* Failure to comply with the provisions of paragraph (e)(2)(v) of this section will not bar the application of the waiver rule of paragraph (h)(1) of this section.

* * * * *

(j) *Special rules for acquisitions affected by regulations under section 338(h)(6)(B*—(1) *Target subject to special rules.* This paragraph (j) applies to a target—

(i) That is a foreign corporation, a DISC, a corporation described in section 934(b), or a corporation to which section 936 applies or

(ii) That has a target affiliate (as defined in paragraph (k)(3)(ii) of this section) that either (A) is described in paragraph (j)(1)(i) of this section or (B) owns stock in a foreign corporation or a domestic corporation that is a DISC or described in section 1248(e).

(2) *No additional suspension of time to make election for target described in this paragraph.* Pursuant to paragraph (c) of this section, the time to make an express election (for an acquisition subject to this section) does not expire before March 15, 1986. Prior to amendment by T.D. 8074, this paragraph (j) provided for an indefinite suspension of time to make an express election for certain targets but permitted an option to make an express election notwithstanding that suspension. Rules applicable to this obsolete option are prescribed in paragraph (j) (3), (4), and (5) of this section.

(3) *Declaration required in statement of section 338 election.* If, on or before March 14, 1986, a statement of section 338 election is filed for a target described in paragraph (j)(1) of this section, and if a regular exclusion election, transitional exclusion election, or transitional stock exclusion election (as defined in § 1.338–5T (c)(2), (j)(1), and (j)(7), respectively) is not made in that statement of section 338 election, then that statement of section 338 election must include, in addition to the other requirements specified in this section, the following declaration (or a substantially similar declaration: "THIS ELECTION IS MADE PURSUANT TO THE OPTION IN § 1.338–1T(j)(2) TO MAKE THE SECTION 338 ELECTION NOTWITHSTANDING THE SUSPENSION."

(4) *Perfecting procedure*—(i) *General rule.* If a statement of section 338 election is required to include the declaration described in paragraph (j)(3) of this section but does not, the election nonetheless shall be valid if—

(A) A timely regular exclusion election, transitional exclusion election, or transitional stock exclusion election is filed or

(B) A timely perfecting declaration is filed.

(ii) *Perfecting declaration.* A "perfecting declaration" is a statement that contains the declaration described in paragraph (j)(3) of this section and that is signed by a person who states under penalties or perjury that he or she is authorized to make the perfecting declaration on behalf of the purchasing corporation. The perfecting declaration must be filed on or before March 15, 1986, with the Internal Revenue Service Center(s) with which the statement of section 338 election is required to be filed under paragraphs (c) and (d) of this section, and a copy of the previously filed statement of section 338 election must be attached.

(5) *Statement of section 338 election filed pursuant to this paragraph (j) is binding.* An election under section 338(g) that is made pursuant to the option in paragraph (j)(2) of this section is subject to all of the provisions of section 338 as well as to the provision of regulations issued or to be issued thereunder, including the regulations under section 338(h)(6).

(k) *Special rules for foreign corporations or DISCs*—(1) *Elections by certain foreign purchasing corporations.* A foreign purchasing corporation that is not required under § 1.6012–2(g) (other than subparagraph (2)(i)(*b*)(*2*) thereof) to file a United States income tax return for its taxable year that includes the acquisition date must file the statement of section 338 election (or any other election under section 338) with the Philadelphia Service Center, Philadelphia, Pennsylvania 19255.

(2) *Election not required until relevent*—(i) *General rule.* * * *

* * * * *

(v) *Subject to United States tax.* For purposes of this paragraph (k)(2), a foreign corporation is considered "subject to United States tax"—

(A) For the taxable year for which that corporation is required under § 1.6012–2(g) (other than subparagraph (2)(i)*(b)(2)* thereof) to file a United States income tax return and

(B) For the period during which that corporation is a controlled foreign corporation, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2).

* * * * *

(4) *Statement of section 338 election may be filed by United States shareholders in certain cases.* * * *

(5) *EIN not required for certain corporations.* If, without regard to section 338 or the regulations thereunder, a corporation is not required to have an employer identification number (EIN) and if such a corporation does not actually have an EIN, then the requirement that an EIN be provided in the statement of section 338 election (or in any other election under section 338) shall not apply to that corporation.

(6) *Special rules for due date of old target's final return.*—(i) *Old target a foreign corporation required to file U.S. return.* The final return of old target is due on the 15th day of the sixth calendar month following the month in which the acquisition date occurs if old target is a foreign corporation that is required under § 1.6012–2(g) (other than subparagraph (2)(i)*(b)(2)* thereof) to file a United States income tax return for its taxable year that includes its acquisition date but that does not have an office or fixed place of business in the United States during such period.

(ii) *Old target a foreign corporation not required to file U.S. return.* A final return of old target is not required if old target is a foreign corporation that is not required under § 1.6012–2(g) (other than subparagraph (2)(i)*(b)(2)* thereof) to file a United States income tax return for its taxable year that includes its acquisition date.

* * * * *

(7) *Notice requirement for U.S. persons holding stock in foreign target*—(i) *Scope.* This subparagraph (7) provides rules relating to notice to U.S. persons holding stock in a foreign target. For additional information that must be included on the schedule required by § 1.338–1T(e) if the notice requirement of this subparagraph (7) applies, see paragraph (e)(1)(i)(G) of this section. For rules applicable to the recipient of the notice, see paragraph (e)(2)(v)(B) of this section.

(ii) *General rule.* If a target subject to an express election (either as the original target or as an affected target) is a foreign corporation, then the purchasing corporation must deliver written notice of the election (with a copy of the statement of section 338 election attached) to—

(A) Each U.S. person (other than a member of the affiliated group that includes the purchasing corporation ("P group")) that, on the acquisition date of the foreign target or at the beginning of the first day after that acquisition date, holds stock in the foreign target and

(B) Each U.S. person (other than a P group member) that sells stock in the foreign target to a P group member during so must of the foreign target's 12-month acquisition period as ends on its acquisition date, provided that the foreign target was a controlled foreign corporation at any time during so much of the taxable year within which its acquisition date occurs as ends on that acquisition date.

(iii) *Form of notice.* The notice to U.S. persons must be identified prominently as a notice of section 338 election and must satisfy all of the following:

(A) The notice must contain the name, address, and employer identification number (if any) of, and the country (and, if relevant, the lesser political subdivision) under the laws of which is organized, the purchasing corporation and the relevant target (*i.e.*, the target the stock of which the particular U.S. person held or sold under the circumstances described in paragraph (k)(7)(ii) of this section).

(B) The notice must identify those corporations as the purchasing corporation and the foreign target corporation, respectively.

(C) The notice must contain the following declaration (or a substantially similar declaration): "THIS DOCUMENT SERVES AS NOTICE OF AN ELECTION UNDER SECTION 338 FOR THE ABOVE CITED FOREIGN TARGET THE STOCK OF WHICH YOU EITHER HELD OR SOLD UNDER THE CIRCUMSTANCES DESCRIBED IN TREASURY REGULATIONS § 1.338–1T(k)(7)(ii). FOR POSSIBLE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES UNDER SECTION 1248 OF THE INTERNAL REVENUE CODE OF 1954 THAT MAY APPLY TO YOU, SEE TREASURY REGULATIONS § 1.338–5T(g). YOU MAY BE REQUIRED UNDER TREASURY REGULATIONS § 1.338–1T(e)(2)(v) TO ATTACH THE INFORMATION ATTACHED TO THIS NOTICE TO CERTAIN RETURNS."

(D) The notice must contain (as an attachment) the required times specified in paragraph (e)(2)(i) of this section.

(iv) *Timing of notice.* The notice required by this subparagraph (7) must be delivered to the U.S. person on or before the latest of the dates specified in this subdivisions (iv). If notice is delivered by United States mail, the date of the United States postmark is deemed to be the date of delivery. The dates are as follows:

(A) March 15, 1986,

(B) The 120th day after the acquisition date of the particular target, or

(C) The day on which the statement of section 338 election is filed.

(v) *Consequence of failure to comply.* If a statement of section 338 election is filed after March 15, 1986, and if notice under this subparagraph (7) must be given to one or more U.S. persons on or before the day on which the statement of section 338 election is filed, then that statement of section 338 election shall not be valid if timely notice is not given to any such U.S. person. Failure to give notice to U.S. persons under circumstances other than those described in the preceding sentence shall not invalidate the statement of section 338 election, but the waiver rule of paragraph (h)(1) of this section will not apply to the same extent as if the requirements of paragraph (e) of this section were not satisfied.

* * * * *

Par. 4. Section 1.338–4T is amended as follows:

1. Paragraph (a) is amended by:

a. Removing the last sentence of paragraph (a) and by adding in its place the following sentence: "For guidance on international aspects of section 338 and on the extent to which the provisions of this section apply in that context, see § 1.338–5T."

b. Adding, immediately after item (f)(1)(ii) of paragraph (a)(3), a new time (f)(2) to read as follows: "(2) Asset acquisition by P (or another member of the P group) from T or T's target affiliate."

c. Removing, from item (f)(6)(iii) of paragraph (a)(3), the misspelled word "acquistions" and by adding in its place the word "acquisitions".

d. Removing, from item (k)(3) of paragraph (a)(3), the words "and 168(d)(92)(B)" and by adding in their place the words "and 168(d)(2)(B)".

e. Removing, from the beginning of item (k)(6) of paragraph (a)(3), the parenthetical"(".

2. Paragraph (b) is amended by:

a. Adding to the end of paragraph (b)(1)(ii) the following sentence: "Except as otherwise provided in this section, T is an original target if a qualified stock purchase is made of its stock."

b. Removing, from paragraph (b)(2), the words "section 338(h)" and by adding in their place the words "section 338".

3. Paragraph (c) is amended by:

a. Removing, from the second sentence of paragraph (c)(1) *Answer 2*, the words "section 338(h)(3)A)(ii)" and by adding in their place the words "section 338(h)(3)(A) (ii)".

b. Removing, from the third sentence of paragraph (c)(1) *Answer 4* Ex. (4), the words "section 338(h)3)" and by adding in their place the words "section 338 (h)(3)."

c. Removing, from paragraph (c)(2) *Question*, the words "section 338(d)(3)" and by adding in their place the words "section 338(d)(3)."

d. Removing, from the first sentence of paragraph (c)(2) *Answer*, the misspelled word "acquistion" and by adding in its place the word "acquisition".

e. Adding a comma immediately after the word "date" in the fourth sentence of paragraph (c)(4) *Answer* Ex. (3).

f. Removing, from the sixth sentence of paragraph (c)(4) *Answer* Ex. (3), the word "that" and by adding in its place the word "the".

g. Removing, from the eighth sentence of paragraph (c)(4) *Answer* Ex. (3), the word "as" and by adding in its place the word "a".

h. Removing, from the second sentence of paragraph (c)(4) *Answer* Ex. (7)(ii), the misspelled word "contitute" and by adding in its place the word "constitute".

i. Removing, from the first sentence of paragraph (c)(5) *Answer* (i)(A), the words "the other of those corporation" and by adding in their place the words "the other of those corporations".

4. Paragraph (f)(1) is amended by:

a. Removing, from paragraph (f)(1)(ii) *Question 2*(ii), the words "target affiliate" and by adding in their place the words "a target affiliate".

b. Removing the colon that follows the word "paragraph" in paragraph (f)(1)(ii) *Question 2*(iv).

5. Paragraph (f)(3) *Answer* Ex. (3) is amended by removing from the third sentence the words "trade of" and by adding in their place the words "trade or".

6. Paragraph (f)(4) *Question 4*(i) is amended by removing the words "exchange asset" and by adding in their place the words "exchanged asset".

7. Paragraph (f)(5) is amended by:

a. Removing, from the title of paragraph (f)(5) *Answer* (vi), the word "*Property*" and by adding in its place the words "*Property acquired*".

b. Removing, from the sixth sentence of paragraph (f)(5) *Answer* (vi) Ex. (2), the words "remaining $28,000" and by adding in their place the words "remaining $18,000".

c. Revising paragraph (f)(5) *Answer* (vii) to read as set forth below.

d. Removing, from paragraph (f)(5) *Answer* (viii), the word "exception" and by adding in its place the words "exception to section".

8. Paragraph (f)(6) is amended by:

a. Revising paragraph (f)(6)(i)(A) to read as set forth below.

b. Revising paragraph (f)(6)(ii) *Answer 1*(i) by adding the following sentence at the end thereof: "For place to file in certain cases if the purchasing corporation is a foreign corporation, see § 1.338–1T(k)(1)."

c. Revising paragraph (f)(6)(ii) *Answer 1*(ii) to read as set forth below.

d. Revising paragraph (f)(6)(ii) *Answer 1*(iii)(C) to read as set forth below.

e. Removing, from the first sentence of paragraph (f)(6)(ii) *Answer 2*(ii), the words "with the protective" and by adding in their place the words "with which the protective".

f. Removing, from the second sentence of paragraph (f)(6)(iv) *Answer 2*(ii)(A), the words "tax liability.)" and by adding in their place the words "tax liability)."

g. Revising paragraph (f)(6)(iv) *Answer 2*(ii)(B) to read as set forth below.

h. Removing, from the first sentence of paragraph (f)(6)(iv) *Answer 3*(i), the misspelled word "*Answere*" and by adding in its place the word "*Answer*".

i. Removing, from (f)(6)(iv) *Answer 3*(ii)(C)(3), the words "the acquiring" and by adding in their place the words "The acquiring".

j. Revising paragraph (f)(6)(iv) *Answer 3*(iv)(D) to read as set forth below.

k. Removing, from the end of paragraph (f)(6)(iv) *Answer 3*(vi)(B), the word "rule.)" and by adding in its place the word "rule)."

l. Removing, from the fourth sentence of paragraph (f)(6)(iv) *Answer 3* Ex. (1)(ii), the words "January 1, 1985" and by adding in their place the words January 1, 1986".

m. Removing, from the first sentence of paragraph (f)(6)(iv) *Answer 3* Ex. (1)(iii), the words "§ 1.150–13(d)(1)" and by adding in their place the words "§ 1.1502–13(d)(1)".

n. Removing, from the fourth sentence of paragraph (f)(6)iv) *Answer 3* Ex. (1)(ii), the word "According" and by adding in its place the word "Accordingly".

o. Revising the first three sentences of paragraph (f)(6)(iv) *Answer 3* Ex. (3)(iii) to read as set forth below.

9. Paragraph (g)(2) is amended by:

a. Removing the colon from the first sentence of paragraph (g)(2) *Answer* (i).

b. Removing, from the heading of paragraph (g)(2) *Answer* (ii), the words "*in t*" and by adding in their place the words "*in T*".

c. Removing the colon from the end of paragraph (g)(2) *Answer* (v) and by adding in its place a period.

d. Removing, from the first sentence of paragraph (g)(2) *Answer* Ex. (2)(ii), the misspelled word "satisified" and by adding in its place the word "satisfied".

e. Removing, from the sixth sentence of paragraph (g)(2) *Answer* Ex. (2)(ii), the word "than" and by adding in its place the word "then".

f. Removing, from the fourth sentence of paragraph (g)(2) *Answer* Ex. (6), the word "Acquisition" and by adding in its place the word "acquisition".

g. Removing, from the parenthetical at the end of the second sentence of paragraph (g)(2) *Answer* Ex. (7)(ii), the misspelled word "hypotheticl" and by adding in its place the word "hypothetical".

10. Paragraph (h) is amended by:

a. Removing, from the first sentence of paragraph (h)(2)(iii), the word "ASDP" and by adding in its place the word "ADSP".

b. Removing, from the first sentence of paragraph (h)(3) *Answer 1*(i), the words "of all old" and by adding in their place the words "of all of old".

c. Removing, from the second sentence of paragraph (h)(3) *Answer 2*(i), the words "of P" and by adding in their place the words "to P".

d. Removing, from the third sentence of paragraph (h)(3) *Answer 2*(i), the words "or T" and by adding in their place the words "for T".

e. Removing, from the second sentence of paragraph (h)(3) *Answer 2* (iii), the words "that fact" and by adding in their place the words "the fact".

f. Removing, from the first sentence of paragraph (h)(3) *Answer 2* (iv), the words "gain an" and by adding in their place the words "gain on".

g. Removing, from the second sentence of paragraph (h)(3) *Answer 2* (vi)(B), the misspelled word "assests" and by adding in its place the word "assets".

h. Removing, from paragraph (h)(3) *Answer 2* (vi)(D), the words "of (section 1245 property)" and by adding in their place the words "of section 1245 property".

i. Removing, from the first line of the formula set out in paragraph (h)(3) *Answer 2* Ex. (1)(ii), the word "ANSP" and by adding in its place the word "ADSP".

j. Removing, from the formula set out in paragraph (h)(3) *Answer 2* Ex. (1)(ii), the words "ADSP=—.46ADSP=$51,816" and by adding in their place the words "ADSP—.46ADSP=$51,816".

k. Removing, from the second sentence of paragraph (h)(3) *Answer 2* Ex. (2), the misspelled word "aquisition" and by adding in its place the word "acquisition".

l. Removing, from the first line of the formula set out in paragraph (h)(3) *Answer 3* Ex. (ii) the letters "xx" and by adding in their place the letter "x".

(m) Removing, from the second sentence of paragraph (h)(3) *Answer 3* Ex. (iii) the words "*i.e.*, $189,422.71×1395348" and by adding in their place the words "*i.e.*, $189,422.71×.1395348".

11. Paragraph (j) is amended by:

a. Removing so much of the first sentence of paragraph (j)(1) as ends after the word "determination" and before the word "new" and by adding in place of the removed language the words "of the total sum ("adjusted grossed-up basis") to be allocated as basis to the assets of".

b. Removing, from the formula set out in paragraph (j)(2) *Answer 4* Ex. (i), the words "ADSP = $75,000 + × $13,616 + (.028 × ADSP − $2,240" and by adding in their place the words "ADSP = $75,000 + $13,616 + (.028 × ADSP) − $2,240".

c. Removing, from paragraph (j)(2) *Answer 5* (ii)(C), the words "§ 1.338–1T(d)(1)(v)" and by adding in their place the words "§ 1.338–1T(d)(1)(v))".

12. Paragraph (k) is amended by:

a. Removing, from paragraph (k)(1) *Question 1*, the word "liquidation" and by adding in its place the word "liquidations".

b. Removing, from the end of the third sentence of paragraph (k)(1) *Answer 3*(i), the words "("hypothetical distribution")".

c. Removing the fourth sentence of paragraph (k)(1) *Answer 3*(i) and by adding in its place the following sentence: "However, if section 332 would have applied to a distribution of all of T's assets in a hypothetical complete liquidation immediately after the plan of complete liquidation was adopted, then section 337(c)(2) will apply to bar the operation of section 337 through section 338(h)(12) unless each corporation that would have been a distributee corporation (within the meaning of section 337(c)(3)(B)(i)) with respect to that hypothetical liquidation also is completely liquidated under the circumstances described in section 337(c)(3)."

d. Removing, from the second sentence of paragraph (k)(1) *Answer 3* (ii), the word "applied" and by adding in its place the word "applies".

e. Removing, from paragraph (k)(1) *Question 4* (ii), the words "a causes T" and by adding in their place the words "A causes T".

13. Paragraph (l)(1) *Question* is amended by removing the words "new tax" and by adding in their place the word "tax".

§ 1.338–4T Questions and answers relating to miscellaneous issues under section 338 (temporary).

* * * * *

(f) *Application of the asset consistency rule of section 338(e)*—(1) * * *

(5) *Certain transactions excepted under section 338(e)(2)(D).*

Question: * * *

Answer: (i) * * *

* * * * *

(vii) *Property subject to timely disposition* (A) *General rule.* The acquisition of property is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D) if, on or before the required disposition date, (*1*) the P group disposes of that property to an unrelated person that is not a target affiliate of T or of an affected target or (*2*) the P group member holding the property ceases to be a member of the P group and ceases to be related to any member of the P group. A P group member is not treated as ceasing to be a member of the P group for purposes of this subdivision (A) if it ceases to exist by reason of a transaction described in section 381(a) and if the acquiring corporation (within the meaning of section 381(a)) is a member of the P group.

(B) *Required disposition date.* The "required disposition date" is the latest of the following three dates: (*1*) March 15, 1986, (*2*) the 90th day after the date on which a P group member acquires the property, or (*3*) the 90th day after the acquisition date of T.

* * * * *

(6) *Carryover basis election exception under section 338(e)(2)(D) and (i)*—(i) *Introduction*—(A) *Overview.* If P makes a qualified stock purchase of T stock and, in lieu of an express election, makes a protective carryover basis election for T under this paragraph (f)(6) ("protective carryover election"), then a tainted asset acquisition with respect to T or any affected target will in no case cause a deemed election under section 338(e)(1) for T or any affected target. A "tainted asset acquisition" occurs with respect to T (or with respect to an affected target) if an express election is not made and if, during the consistency period of T (or of the affected target), a P group member acquires an asset of T or its target affiliate (or of the affected target or its target affiliate) in an acquisition that is described in section 338(e)(1) and that is not subject to an exception (other than the carryover basis election exception of this paragraph (f)(6)) to section 338(e)(1). The protective carryover election is irrevocable and bars an express election for T and the affected targets. If the P group makes a tainted asset acquisition but does not make a protective carryover election for T, then the tainted asset acquisition will cause a carryover basis election by affirmative action ("affirmative action carryover election") as of the later of the day of the tainted asset acquistion or the expiration of the period within which to make the protective carryover election for T. Pursuant to paragraph (f)(1)(ii) *Answer 1* of this section, however, the District Director in appropriate cases may cause a deemed election under section 338(e)(1) in lieu of the otherwise applicable affimative action carryover election. Thus, the only certain way for the P group to avoid a deemed election under section 338(e)(1) in the event of a tainted asset acquisition is to make a timely protective carryover election. Apart from the District Director's authority to override an affirmative action carryover election and impose a deemed election under section 338(e)(1) in lieu thereof, the consequences of a protective carryover election and an affirmative action carryover election are identical, except that an offset prohibition election under this paragraph (f)(6) and the special increase in basis of transferee member stock under paragraph (f)(6)(iv) *Answer 1*(i)(B) of this section are available only if a *protective* carryover election is made. (For a special limitation on the application of the offset prohibition election, see § 1.338–5T(d)(1).) Unless otherwise indicated, any reference in this section to the carryover basis election exception of this paragraph (f)(6) is a reference to either the protective carryover election or the affirmative action carryover election.

* * * * *

(ii) *Procedure for making protective carryover election and affirmative action carryover election.*

Question 1: * * *

Answer 1: * * *

(ii) *Corporations required to join in making protective carryover election*—(A) *General rule.* Subject to two exceptions, each corporation included in the P group at any time during so much of T's consistency period as ends on the day the protective carryover election statement is filed is required to join in making the protective carryover election.

(B) *Exception for certain prior P group members.* A corporation that ceases to be a P group member prior to the day on which the protective carryover election statement is filed is not required to join in making the protective carryover election if it did not make a tainted asset acquisition while a member of the P group. (Caution should be exercised when relying on this exception, since it is not always clear whether an asset acquisition is a tainted asset acquisition.)

(C) *Certain foreign P group members.* A foreign P group member is not required to join in making the protective carryover election if (*1*) it is not subject to United States tax (within the meaning of §1.338–1T(k)(2)(v)) for its taxable year in which the protective carryover election statement is filed or for any prior taxable year any day of which occurs during the consistency period, (*2*) it does not purchase any of the stock included in the qualified stock purchase of T or of an affected target, and (*3*) it does not directly or indirectly hold stock in a foreign P group member that satisfies one or both of the two preceding conditions. A foreign P group member that is not required to join in making the protective carryover election ("nonjoining member") nonetheless must be identified in that election as if it were so required (such as by a footnote system). In addition, tainted asset acquisitions by a nonjoining member shall be treated as asset acquisitions subject to an affirmative action carryover election unless that member actually joins in making the election, *i.e.*, unless a representative of that member signs the election on that member's behalf. The District Director shall not have authority, however, to impose a deemed election under section 338(e)(1) in the event of a tainted asset acquisition by a nonjoining member that is treated as subject to an affirmative action carryover basis election pursuant to the preceding sentence.

(D) *U.S. shareholders of CFC P group member may act on its behalf.* A P group member that is a controlled foreign corporation will be considered to have joined in making the protective carryover election if its U.S. shareholders sign the protective carryover election statement in its behalf. For purposes of this subdivision (D), the principles of § 1.338–1T(k)(4) (section 338 election made by U.S. shareholders) apply.

(iii) *Contents of protective carryover election statement*— * * *

* * * * *

(C) *Schedule of information relating to corporations subject to protective carryover election* A schedule providing the information specified in this subdivision (C) ("required data") must be attached to the protective carryover election statement. Failure to attach the schedule, however, will not invalidate the protective carryover election. The schedule must satisfy the following requirements:

(*1*) It must contain the name, address, and employer identification number (if any) of, and (for a foreign corporation) the country (and further political subdivision, if relevant) under the laws of which is organized, each corporation that, as of the day the protective carryover election statement is filed, is an affected target ("includible affected target").

(*2*) It must disclose the fair market value of the consideration paid by the purchasing corporation for the stock of each directly acquired target, *i.e.*, the original target and each includible affected target (other than an includible affected target for which a qualified stock purchase would occur solely by reason of section 338 (a)(2) and (h)(3)(B)).

(*3*) It must identify the portion of the consideration paid for the stock of each directly acquired target that is represented by cash, purchase money debt, and other components of consideration (with each such other component separately stated).

(*4*) It must disclose the liabilities of the original target and each includible affected target (whether or not a directly acquired target) as of the close of the acquisition date (or as of the close of the day that would be the acquisition date if an express election were made).

* * * * *

(iv) *Consequences of protective or affirmative action carryover election.*

Question 1: * * *

* * * * *

Answer 2: (i) * * *

(ii) *Exception if INA acquisition is subject to offset prohibition election*— * * *

(B) *Limitation on application of certain credits.* For purposes of determining the amount of a restricted credit permitted as a credit against N's tax liability for N's taxable year in which there is INA gain subject to the offset prohibition, N's pre-credit tax liability is calculated as if that INA gain were not income to N. "Restricted credits" are credits against tax described in part IV (other than subparts A and C thereof and section 27(a)) of subchapter A of chapter 1 of the Code (*i.e.*, sections 27(b), 28–30, and 38–41). For a separate restriction applicable to the foreign tax credit and for a special rule coordinating that restriction with this subdivision (B), see § 1.338–5T(d)(2).

* * * * *

Answer 3: (1) * * *

(iv) *Limitations if C ceases to be a member and offset prohibition election applies*—* * *

* * * * *

(D) *Limitation on application of certain credits.* For purposes of determining the amount of a restricted credit permitted as a credit against the P group's consolidated tax liability for a taxable year in which there is a remaining ICA gain amount subject to the offset prohibition, the P group's pre-credit consolidated tax liability is calculated as if that remaining ICA gain amount were not income to the P group. "Restricted credits" are credits against tax described in part IV (other than subparts A and C thereof and section 27(a)) of subchapter A of chapter 1 of the Code (*i.e.*, sections 27(b), 28–30, and 38–41). For a separate restriction applicable to the foreign tax credit and for a special rule coordinating that restriction with this subdivision (D), see § 1.338–5T(d)(2).

* * * * *

Example (1). * * *

* * * * *

Example (3). (i) * * *

* * * * *

(iii) Second, for purposes of determining the amount of any restricted credit (as defined in subdivision (iv)(D) of this *Answer 3*) permitted as a credit against the P group's consolidated tax liability for 1987, the pre-credit consolidated tax liability is calculated as if the remaining ICA gain amount of $4,500 were not income to the P group for 1987. Under these facts, the P group has no income (and therefore no pre-credit tax liability) in 1987 absent the remaining ICA gain amount. Thus, the P group's 1987 tax liability may not be reduced by restricted credits.

* * * * *

§ 1.338(h)(10)–1T [Amended]

Par. 5. Section 1.338(h)(10)–1T is amended as follows—

1. Paragraph (c)(3) is amended by removing "§ 1.338–1T(e)(1)(i)(D)" and by adding in its place "§ 1.338–1T(e)(1)(i)(E)".

2. Paragraph (d)(4) is amended by removing "§ 1.338–1T(e)(2)(i)" and by adding in its place "§ 1.338–1T(e)(2)(v)(A)".

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by inserting in the appropriate place in the table "1.338–5T . . . 1545–0702".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitations of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 338 and 7805, respectively).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: January 21, 1986.

J. Roger Mentz,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86–2951 Filed 2–6–86; 4:57 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

Records and Testimony

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document updates the current list of field offices of the Office of Hearings and Appeals in paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, to reflect changes which have been effected heretofore. It removes the first and third listed offices of Administrative Law Judges in Sacramento, CA, and Pittsburgh, PA, respectively, as well as the field office of Administrative Law Judge (Indian Probate) in Room 3319 of the ninth listed offices of Administrative Law Judges (Indian Probate) in Billing, MT, these offices having been closed heretofore. It changes the location of the listed field office of Administrative Law Judge (Indian Probate) in Phoenix, AZ, from Room 2021 to Room 3427, this change in location also having been effected heretofore.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: Frances A. Patton, 703–235–3810.

SUPPLEMENTARY INFORMATION: Since this is an action reflecting agency management and changes of field offices which have previously been effected, the proposed rulemaking process is determined to be unnecessary and impractical.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Freedom of information, Privacy.

Therefore, under authority of the Secretary of the Interior contained in 5 U.S.C. 301, paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, is amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read:

Authority: 5 U.S.C. 301, 552, and 552a, 31 U.S.C. 9701 and 43 CFR 1460, unless otherwise noted.

Appendix B—[Amended]

2. Paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, is amended by removing the first and third listed offices of Administrative Law Judges in Sacramento, CA, and Pittsburgh, PA, respectively, as well as the field office of Administrative Law Judge (Indian Probate) in Room 3319 of the ninth listed offices of Administrative Law Judges (Indian Probate) in Billings, MT; and by changing the room number of the sixth listed field office of Administrative Law Judge (Indian Probate) in Phoenix, AZ, from Room 2021 to Room 3427.

Dated: February 4, 1986

Joseph E. Doddridge, Jr.,

Deputy Assistant Secretary of the Interior.

[FR Doc. 86–3020 Filed 2–11–86; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

43 Public Land Order 6613

[NM 57432]

New Mexico; Withdrawal of Public Lands for the Red Rock Wildlife Experimental Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 712.16 acres of land for 15 years in order to protect the breeding habitat of the desert bighorn sheep, a New Mexico State-listed endangered species. The order includes 312.16 acres of public land withdrawn from surface entry and mining, and 400 acres of private surface and Federal subsurface land withdrawn from mining. All the land will be open to mineral leasing.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Phil Beck, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504–1449, 505–988–6326.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, and entry under the general land laws including the United States mining laws (30 U.S.C. Ch. 2). The private surface and Federal subsurface land is withdrawn from location under the United States mining laws (30 U.S.C. Ch. 2). All of the land will be open to leasing under the mineral leasing laws.

The withdrawal is to protect the breeding habitat of captive desert bighorn sheep, a State-listed endangered species.

New Mexico Principal Meridian

Public land,
T. 18 S., R. 18 W.,
Sec. 9, Lots 1 through 4, S½NE¼SW¼, S½NW¼SE¼, SE¼SE¼;
Sec. 16, Lots 1 throught 5, NW¼SE¼.
Private surface, Federal subsurface land,
Sec. 15, NW¼NW¼, W½SW¼;
Sec. 21, NE¼NE¼, W½NE¼, W½NW¼;
Sec. 22, NW¼NW¼.

The area described contains 712.16 acres in Grant County.

2. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 15 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: January 28, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86–3033 Filed 2–11–86; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 51180-5180]

Foreign Fishing, Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of the Pacific cod domestic annual harvest (DAH) and reserve in the Central and Western areas to total allowable level of foreign fishing (TALFF) under provisions of the fishery management plan for groundfish of the Gulf of Alaska. This notice also announces apportionments from reserves to TALFF of small amounts of other species necessary for bycatch in the Pacific cod directed fishery. This action is necessary to provide sufficient Pacific cod as a target species. This apportionment is intended as a management measure that promotes full utilizations of Gulf of Alaska groundfish.

DATES: This Notice is effective February 7, 1986. Comments on this action are invited until March 10, 1986.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The aggregate data upon which this adjustment is based will be available for public inspection during business hours at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The regulations implementing the fishery management plan for groundfish of the Gulf of Alaska authorize the apportionment of surplus amounts of the DAH and reserve to TALFF if the Director, Alaska Region, NMFS (Regional Director), has determined that these portions of the DAH and reserve will not be harvested by domestic fishermen during the remainder of the year.

The Regional Director has determined that 11,640 metric tons (mt) of Pacific cod in the Gulf of Alaska will not be harvested by domestic fishermen during the remainder of the year and that it is necessary to apportion this amount immediately to TALFF in order to avoid disruption of foreign and domestic fisheries. Consequently, 11,640 mt of Pacific cod in the Western Area of the Gulf of Alaska is transferred from the domestic annual processing (DAP) and joint venture processing (JVP) portions of the DAH and from the reserve to TALFF as shown in Table 1 below. In the Central Area, 3,880 mt was reapportioned from the DAP portion of the DAH to TALFF by an earlier notice in the **Federal Register** (51 FR 4603, February 6, 1986); this amount is repeated in Table 1. Small amounts of other species necessary for bycatch in the Pacific cod directed fishery are apportioned from the reserves as shown in Table 1. The Regional Director has determined that these amounts will not be harvested by vessels of the United States during the remainder of the year. This action is consistent with the DAH and TALFF levels recommended by the North Pacific Fishery Management Council.

TABLE 1.—REAPPORTIONMENT TO TALFF OF DAH AND RESERVES BY REGULATORY AREA IN THE GULF OF ALASKA (FIGURES ARE IN METRIC TONS) DAH=DAP+JVP

	Current	This action	Revised
Pacific cod:			
Western			
DAH	13,248	−6,328	4,920
DAP	10,727	−7,327	3,400
JVP	2,521	−1,001	1,520
Reserve	3,312	−3,312	0
TALFF	0	+11,640	11,640
Central			
DAH	26,832	−3,880	22,952
DAP	23,873	−3,880	19,993
TALFF	0	+3,880	[1] 3,880
Pollock:			
Western/Central			
Reserve	16,000	−40	15,960
TALFF	0	+40	40
Flounders:			
Western			
Reserve	2,080	−60	2,020
TALFF	0	+60	60
Central			
Reserve	2,930	−10	2,920
TALFF	0	+10	10
Atka mackerel:			
Western			
Reserve	926	−20	906
TALFF	0	+20	20
Central			
Reserve	100	−10	90
TALFF	0	+10	10
Thornyhead:			
Gulf-wide			
Reserve	750	−10	740
TALFF	0	+10	10
Squid:			
Gulf-wide			
Reserve	1,000	−10	990
TALFF	0	+10	10
Other species:			
Gulf-wide			
Reserve	4,492	−180	4,312
TALFF	0	+180	180

[1] This amount was released previously (51 FR 4603, February 6, 1986) and is repeated here.

Classfication

This action is taken under 50 CFR Parts 611 and 672, and complies with Executive Order 12291.

In view of the need to avoid disruption of foreign and domestic fisheries, the Agency has determined that affording a prior comment period and delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest. Public comments are invited for 30 days after the effective date of this notice.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: February 7, 1986.

William G. Gordon,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 86-3100 Filed 2-7-86; 4:15 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 29
Wednesday, February 12, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1135

[Docket No. AO-380-A5]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments To Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposal Rule.

SUMMARY: This decision recommends the adoption of several amendments to the Southwestern Idaho-Eastern Oregon Federal milk order. The recommended changes would relax the standards required under the order for distributing plants, supply plants, and producers to participate in the marketwide pool. The percentage of a pool distributing plant's total receipts that must be accounted for as route dispositions would be reduced from 40 to 25 percent. The amount of its receipts that a pool supply plant would be required to ship to pool distributing plants also would be reduced from 40 to 25 percent. The requirement that at least one day's production of milk be physically received at a pool plant during each of the months of September through February in order for the rest of the producer's milk to be eligible for unlimited diversion would be changed to a requirement that one day's production of each producer's milk must be physically received at a pool plant for three consecutive months on a one-time basis. The limit on the percentage of a handler's milk that may be diverted to nonpool plants would be changed from 70 percent in the months of September through February and 80 percent in other months to 80 percent in all months.

The amendments were proposed by Dairymen's Creamery Association, a cooperative association representing nearly two-thirds of the dairy farmers supplying milk to the Southwestern Idaho-Eastern Oregon market, and are based on the record of a public hearing held at Boise, Idaho, on October 16, 1985.

DATE: Comments are due on or before February 27, 1986.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would relax the pooling performance standards required of handlers and promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued August 29, 1985; published September 4, 1985 (50 FR 35829).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Southwest Idaho-Eastern Oregon marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, by the 15th day after publication of this decision in the **Federal Register.** Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Boise, Idaho, on October 16, 1985, pursuant to a notice of hearing issued August 29, 1985 (50 FR 35829). One Proponent brief was filed in support of the proposed amendments.

The material issues on the record of hearing relate to:

1. Pool plant qualification requirements.
   (a) Distributing plant.
   (b) Supply plant
2. Diversion of producer milk.
   (a) Producer delivery requirement.
   (b) Limitation on diversions to nonpool plants.
3. Continued suspension of producer delivery requirements and limitation on diversions to nonpool plants.
4. Correction of published Class I price computation procedure.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pool plant qualification requirements

Dairymen's Creamery Association proposed that the pool plant qualification requirements be relaxed for both distributing and supply plants. Those requirements are discussed in the following findings.

(a) *Distributing plant.* The total route distribution requirement that must be met by distributing plants to qualify for pool status under the order should be reduced from 40 to 25 percent of the plant's total receipts of fluid milk products. The change was proposed by Dairymen's Creamery Association (DCA), and was supported at the hearing by spokesmen for DCA and Associated Dairies, a distributing plant operator with two distributing plants pooled under the order. The DCA representative introduced statistics showing that all of the producer milk of DCA, Mountain Empire Dairymen's Association (MEDA) and one long-term contract producer, representing over 50 percent of the producer milk on the

market, is pooled on the basis of Associated Dairies' route dispositions. He testified further that, as Associated Dairies' fluid milk sales represent less than half of the Class I sales under the order, the Class I utilization of milk pooled through Associated Dairies is much less than the 16 percent currently experienced by the market as a whole.

The witness stated that the two Associated Dairies' plants currently receive more milk than is needed at either plant for milk products processed there in order to assure that all of the DCA and MEDA milk will be eligible for pooling. He introduced an exhibit that showed an average of over 2,500,000 pounds of milk per month delivered to Associated Dairies and transferred back out to nonpool plants during the period from January 1984 through August 1985. This practice, he testified, resulted in the failure of one of the two Associated Dairies' plants to meet the order's route disposition requirements for pooling during the summer of 1985, and necessitated the suspension of the limits on diversions of producer milk directly to nonpool plants to assure the continued pooling of the two cooperatives' milk supplies.

The president of Associated Dairies testified in favor of the proposed amendment to reduce the pooling standard for distributing plants. He stated that DCA is a half owner of Associated Dairies, and that Associated Dairies cooperates with DCA in helping to assure that a maximum amount of DCA's and MEDA's milk is eligible for pooling by maximizing receipts of the cooperatives' milk at Associated Dairies. In doing so, he said, Associated Dairies has incurred added costs, increased the potential for shrinkage in the milk for which they are held accountable, and caused additional work in their accounting and office operations. The witness also stated that in transferring unneeded milk to handlers with whom they had no prioir dealings, Associated Dairies had encountered some cashflow problems because of delays in payments for milk. The Associated Dairies' witness testified that an increase in Class II use has contributed to the difficulty of maintaining pool status for the handler's two plants. He stated that a contract to supply ice cream mix to a number of fast-food outlets in the Northwest has created an imbalance in the relationship between Class I and Class II sales within Associated Dairies' operations. The witness indicated that as Class II sales increase it will become more difficult to dispose of at least 40 percent of Associated Dairies' receipt as Class I route dispositioins, and urged adoption of the reduced percentage requirement.

Statistics introduced at the hearing by the Southwestern Idaho-Eastern Oregon market administrator's office show that the percentage of producer milk used in Class I in the market since the effective date of the order in 1981 has ranged from 13 to 24 percent. In the 18 months immediately preceding the hearing, the Southwestern Idaho-Eastern Oregon Class I use percentage at no time reached 20 percent. At the present time, Class I use in the market is increasing, but at a lesser rate than production. As a result, the percentage of the total producer milk used in Class I is declining.

Adoption of the proposed increase in the limits on the amount of milk that may be delivered directly to nonpool plants would allow DCA and Associated Dairies to reduce the amount of producer milk received at Associated Dairies' plants to a quantity more in line with Associated's requirements, and thereby increase the percentage of such receipts used in Class I. However, in the Associated Dairies' operation, Class II use apparently is accounting for a growing percentage of the handler's fluid milk receipts. Therefore, Associated Dairies is likely to continue to experience difficulty in meeting the pool plant qualification requirements since much of the milk received at Associated's plants will be needed for use in Class II products.

The current provision that requires a distributing plant to distribute on routes 40 percent of its fluid milk receipt is not consistent with the intent of the marketwide pooling provisions of the order, since it threatens the pooling status of a large proportion of the milk supply associated with the market. It is appropriate to adjust the requirement downward to better reflect the market's present balance between the supply of and demand for fluid milk. Accordingly, DCA's proposal to reduce from 40 to 25 percent the percentage of a distributing plant's fuild milk receipts that must be distributed on routes in order for the distributing plant to qualify for pooling should be adopted.

(b) *Supply plant.* The minimum delivery requirement to qualify a supply plant for pool status under the order should be reduced from 40 to 25 percent of the plant's receipts. The receipts to be included in calculation of a supply plant's pool qualification should continue to include producer milk diverted from the plant by the plant operator.

The proposal to lower the monthly delivery requirement for supply plants from 40 to 25 percent was made by Dairyman's Cooperative Association and supported by Associated Dairies. Mountain Empire Dairymen's Association, the operator of the only supply plant pooled under the order, did not testify at the hearing or file a post-hearing brief.

The witness for the proponent testified that the supply plant operated by MEDA at Meridian, Idaho, represents the primary supply of milk for Associated Dairies' Boise plant. He also stated that the supply plant is the only pool outlet for MEDA and DCA producer milk in addition to the Associated Dairies distributing plant at Twin Falls that receives deliveries of DCA member milk direct from farms. In order to assure that the supply plant is pooled, he said, milk is moved first to the supply plant and then to the Boise distributing plant or to a DCA nonpool manufacturing plant at Caldwell. The witness stated that some uneconomic handling is associated with pooling milk through the supply plant. In a post-hearing brief filed by DCA, it was pointed out that the milk supply has increased by 31 percent since 1981, causing a much higher volume of milk to be transferred to nonpool manufacturing plants. The brief stated that a reduction in the supply plant shipping standard would assist the cooperative in attaining orderly, efficient pooling of its milk supply. Although DCA had proposed the removal of diversions of producer milk to nonpool plants from the receipts to be included when computing the supply plant's qualification for pooling, the witness did not address that portion of the proposal in his testimony.

The amount of milk that a supply plant is required to ship to pool distributing plants in order to qualify for pooling should be reduced from 40 to 25 percent of its receipts of fluid milk. The reduced percentage would bring the supply plant pool qualification requirement into closer conformity with the market's percentage of Class I use. As stated by proponent witness in relation to the distributing plant qualification percentage, the Associated Dairies-DCA-MEDA group represents over 80 percent of the produce milk on the market, but less than 50 percent of the market's Class I sales. A requirement that the supply plant through which much of the group's milk is pooled ship 40 percent of its receipts to distributing plants when the the marketwide percentage of producer milk used in Class I products is less than 20 percent could only result in excessive levels of unnecessary and uneconomic handling and hauling of milk between

plants solely for the purpose of qualifying milk for pooling. In the absence of any support from proponent for the portion of the DCA proposal that would remove diverted milk from receipts in the computation of supply plant pool qualification that part of the proposal should not be considered.

2. Diversion of producer milk

Dairymen's Creamery association proposed that the producer milk definition in the order be amended to reduce the number of deliveries of a fairy farmer's milk that must be physically received at pool plants if the rest of the farmer's milk is to be eligible for diversion to nonpool plants, and to increase the percentage of a handler's total milk supply thay may be diverted directly form farms to nonpool plants. The president of DCA testified that four years' experience in pooling milk under the order had shown these order provisions to be unnecessarily burdensome on handlers and procedures in light of the low Class I use percentage of the market and the increasing supply of milk. The proposed amendments are discussed in the following paragraphs.

(a) *Producer delivery requriement.* The requirement that at least one day's production of each producer's milk be physically received at a pool plant during each of the months of September through February in order for the rest of the producer's milk to be diverted to nonpool plants as producer milk should be relaxed. Instead, one days' production of each producer's milk should be received at a pool plant for three consecutive months on a one-time basis, as proposed by DCA.

The DCA controller testified that the order's present "touch-base" requirements place an unneeded burden on handlers and producrs. He stated that compliance with the provisions causes unnecessary handling and hauling of producer milk to assure that it is received at pool plants as required by the order. The witness pointed out that the milk of producers located closer than others to pool plants can be delivered to those plants more economically than the milk of producers located farther away from the pool plants. At the same time, he noted, it is costly and inefficient to displace the milk of nearby producers to a distant nonpool plant when the milk of more distant producers must be moved to the pool plant solely for purposes of pool qualification.

The witness testified that the proposed requirement that new producers deliver at least one day's production per month to pool plants for three consecutive months will demonstrate that producers who wish their milk to be pooled actually are able to supply milk to meet the fluid needs of the market. The witness expressed his belief that once a producer's ability to supply the market has been established, there is no longer any need for the producer to prove that ability as long as he remains associated with the market. A requirement that a producer continue to demonstrate his ability to supply the market, he stated, serves only to increase the costs to producers of supplying the market by requiring unnecessary and uneconomic hauling and handling. The witness suggested, however, that if a producer is not pooled under the Southwestern Idaho-Eastern Oregon order for a period of 60 consecutive days, the producer should be required to demonstrate his willingness and ability to once again supply the market by again fulfilling the proposed three-month delivery requirement.

In support of DCA's proposal to relax the order's limitations on the diversion of producer milk from producers' farms directly to nonpool plants, the witness submitted an exhibit showing the amounts of producer milk moved unnecessarily to pool plants solely to qualify it for pooling, and the amount that failed to qualify for pooling, for each month of January 1984 through August 1985. During the months of September through February, when the "touch-base" provisions of the order were in effect, the amount of milk per day that failed to qualify for pooling averaged over 40 percent higher than the daily average amount of milk that went unpooled during the months of March through August.

The "touch-base" requirement proposed by DCA should represent an adequate standard for individual producers to meet in order to qualify their milk for unlimited diversion to nonpool plants. There is no indication in the record of the hearing that relaxation of the indivdual producer delivery requirements would attract additional unneeded supplies of milk to the market. A producer located at some distance from the marketing area would still have to maintain a close association with the market. If the milk of such producer were not pooled on the Southwestern Idaho-Eastern Oregon market for a priod of 60 days, the producer would have to requalify his milk for unlimited diversions.

It is apparent from the witnesses' testimony that the present "touch-base" requirements of the order are overly burdensome. Producers are required to demonstrate an association with the fluid market that substantially exceeds the market's demand for milk to be used in fluid products. As a result, the uneconomic hauling and handling required to comply with the provisions of the order are unnecessarily burdensome to producers and cooperative association supplying the market. Accordingly, DCA's proposed changes to the individual producer delivery standards should be adopted. For easier administration, however, the proposed 60-day period off the market after which a producer's milk would have to be requalified should be changed to two months.

(b) *Limitation on diversions to nonpool plants.* The limit on the percentage of a handler's milk that may be diverted from producers' farms directly to nonpool plants should be changed from 70 percent in the months of September through February and 80 percent in other months to 80 percent in all months.

Dairymen's Creamery Association proposed that the diversion limits of the order be relexed to enable cooperative associations and proprietary handlers to more easily handle milk supplies in excess of the market's fluid needs. The DCA controller cited market statistics that show milk production increasing substantially while Class I use has increased at a lesser rate. He stated that the growing imbalance between production and fluid use has caused increasing difficulties in assuring that all Grade A producer milk in the area and available for pooling will actually be pooled without incurring severe handling and hauling costs. The witness emphasized that all of the milk of DCA and MEDA producers that is pooled on the Southwestern Idaho-Eastern Oregon market is associated with the market on the basis of Associated Dairies' fluid milk sales. He stated that the DCA and MEDA milk represents over 80 percent of the milk pooled on the market, while Associates Dairies' represents less than half of the market's Class I disposition.

Given the Southwestern Idaho-Eastern Oregon marketwide average Class I utilization of approximately 16 percent for the first eight months of 1985, the Class I use percentage of all the DCA and MEDA milk pooled on the basis of Associated Dairies' fluid milk disposition would be less than 10 percent. The level of Class I use in the market is clearly not high enough to justify a requirement that 30 percent of all producer milk be received at pool plants during the months of September through February. In order that the milk of producer members of DCA and MEDA who have been supplying the fluid needs of the market since its

inception in 1981 is not to be excluded from the pool or the cooperatives are not to undertake unnecessary, inefficient and burdensome hauling and handing practices to assure that their member producers' milk is pooled, the diversion limits should be relaxed in accordance with DCA's proposal.

3. Continued suspension of producer delivery requirement and limitation on diversions to nonpool plants

There is no need at this time for a further suspension of the order's diversion limits and "touch-base" requirements. At the time of the hearing, the diversion limits and producer delivery requirements had been suspended for the months of September 1985 through February 1986. The DCA witness testified that suspension of the provisions would be necessary until the order is amended. However, the order does not require each individual producer's milk to be received at pool plants during the period of March through August, and allows 80 percent, rather than 70 percent, of a handler's supply of producer milk to be diverted to nonpool plants. On cross-examination, the witness stated that DCA will be able to operate under the provisions of the order without incurring the costs of unnecessary hauling during the months of March through August 1986. There is no reason to believe that the process of amending the Southwestern Idaho-Eastern Oregon Milk order will not be complete will before September 1986. Therefore, the suspensions currently in effect through February 1986 need not be extended.

4. Correction of published Class I price computation procedure

The instructions currently contained in the order for computing the Class I price should be changed to reflect the findings and conclusions of the final decision published December 7, 1982 (47 FR 54978). The language of § 1135.50(a) should read "The Class I price shall be the basic formula price for the second preceding month plus $1.50." Due to a typographical error in the final order, published December 20, 1982 (47 FR 57445), § 1135.50(a) in the Code of Federal Regulations (CFR) reads "The Class I price shall be the basic formula price for the preceding month plus $1.50." This error must be corrected by means of a docket in order to be corrected in the CFR. This proceeding is an appropriate opportunity for making the correction.

Rulings on Proposed Findings and Conclusions

A brief and proposed findings and conclusions were filed on behalf of certain interested parties. This brief, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southerwestern Idaho-Eastern Oregon order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in veiw of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Diary products.

PART 1135—[AMENDED]

1. The authority citation for CFR Part 1135 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1135.7, the first sentence of paragraph (a)(2) and the introductory text of paragraph (b) are revised to read as follows:

§ 1135.7 Pool plant.

* * * * *

(a) * * *

(2) Total route disposition (except filled milk) during the month equal to not less than 25 percent of such receipts.

* * * * *

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred to pool distributing plants is 25 percent or more of the Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant by the plant operator but excluding producer milk diverted to the plant pursuant to § 1135.13), subject to the following conditions:

* * * * *

3. In § 1135.13, paragraphs (f) (1), (2), (3), (4) and (5) are revised to read as follows:

§ 1135.13 Producer milk.

* * * * *

(f) * * *

(1) Milk of a dairy farmer who was not a "producer" in the preceding two months shall not be eligible for diversion until one day's production of milk is physically received at a pool plant;

(2) During each of a dairy farmer's first three months as a "producer" under this order, and after any period of two months or longer that a dairy farmer is not a "producer" under this order, milk of the dairy farmer shall not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(3) The total quantity of milk diverted by a cooperative association during any month may not exceed 80 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the

month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 80 percent of the producer milk that the handler cause to be delivered to or diverted from pool plants during the month;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraphs (f) (3) and (4) of this section. The total quantity so diverted during any month may not exceed 80 percent of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

* * * * *

4. In § 1135.50, paragraph (a) is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.50.

* * * * *

Signed at Washington, DC, on February 6, 1986.

James C. Handley,

Administrator, Agricultural Marketing Service.

[FR Doc. 86-2930 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-04-AD]

Airworthiness Directives; Boeing Model 757-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection for proper self-locking torque of certain self-locking nuts, and replacement, if necessary. This action is prompted by detection of several nuts that were found to have insufficient self-locking torque for proper self-locking. This situation, if not corrected, could result in the loss of an affected nut and the loss of proper retention of the associated airplane component.

DATE: Comments must be received on or before April 6, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-04-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invented

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-04-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During the trouble shooting of a flight control problem on a Boeing Model 767 airplane in service, two self-locking nuts that attach the power control actuators to the elevator surface were found without the self-locking feature. After relieving the installation torque, these nuts could be removed with hand pressure. Boeing conducted checks at their manufacturing facilities for Model 757 airplanes and found additional nuts that had inadequate self-locking characteristics. The suspect nuts are installed on the nose gear door actuator attachment, rudder pedal adjustment cable retainer, main landing gear jury brace support attachment, main landing gear forward trunnion drag fitting aft attachment, and the Pratt and Whitney (P&W) 2037 engine front evener bar attachment. The loss of these self-locking nuts could result in the loss of proper retention of the associated component.

The Boeing Company issued Service Letter 757-SL-27-24 dated November 20, 1985, which identifies the locations of the suspect nuts and provides a procedure to verify if the nuts have the proper self-locking torque.

Since these conditions are likely to exist of develop on other airplanes of this type design, an AD is proposed that would require operators to inspect for the proper self-locking torque on certain self-locking nuts in accordance with the Boeing service letter. All nuts found to have insufficient self-locking torque must be replaced prior to further flight.

It is estimated that 40 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD to U.S. operators is estimated to be $32,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26,

1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities becasue, few, it any, Boeing Model 757-200 airplane are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 757-200 series airplanes listed in Boeing Service Letter 757-SL-27-24, dated November 20, 1985. To detect nuts that have insufficient self-locking troque characteristics, installed on the nose gear door actuator attachment, rudder pedal adjustment cable retainer, main landing gear jury brace support attachment, main landing gear forward trunnion drag fitting aft attachment, and the P&W 2037 engine front evener bar attachment, accomplish the following, unless already accomplished:

A. Within the next 60 days after the effective date of this AD, check the self-locking nuts, P/N BACN10JC12CM or BACN10JC12CD, for proper self-locking torque in accordance with Paragraph II of Boeing Service Letter 757-SL-27-24, dated November 20, 1985, or later FAA-aproved revision. If any self-locking nut is found not to meet the self-locking torque criteria of Boeing Service Letter 757-SL-27-24, dated November 20, 1985, or later FAA-approved revision, it must be replaced prior to further flight with a nut which meets the self-locking torque criteria.

B. Alternate mens of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications requred by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3703, Seattle, Washington 98124. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 5, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-3000 Filed 2-11-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-167-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 -10, -20, -30, -40, -50, -80, and C-9 Series Airplanes (Fuselage Number 1 through 1242)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) applicable to certain McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, that requires inspection of the elevator boost cylinder rod end nut. This proposal would revise the fuselage number applicability and provide a modification that constitutes terminating action for the repetitive inspection requirements of the AD.

DATE: Comments must be received no later than April 6, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-167-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Salas, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filled in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-167-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reports of elevator boost cylinder rod end nuts working loose on certain McDonnell Douglas Model DC-9 and C-9 series airplanes. In three cases, the nut was found completely removed from the rod end. This condition, if not corrected, could result in marginal elevator control authority. The FAA issued Airworthiness Directive (AD) 85-11-02, Amendment 39-5068 (50 FR 20896; May 25, 1985), applicable to Model DC-9 and C-9 series airplanes, fuselage numbers 1 through 1195, to require inspection and replacement, if necessary, of the elevator boost cylinder attach rod end nuts. After issuance of Amendment 39-5068, McDonnell Douglas issued DC-9 Service Bulletin 27-262, dated November 27, 1985, which provides instructions for replacing the existing rod end, and adding a self-lubricating bushing and a castellated nut and cotter pin. The Service Bulletin also includes additional airplanes which may be affected.

Since this condition may exist or develop on other airplanes of this same type design, an AD is proposed which would expand the applicability of AD 85-11-02 to include additional affected airplanes, and provide a modification, in accordance with the McDonnell Douglas service bulletin previously mentioned, which would constitute terminating action for the AD.

It is estimated that 1125 airplanes of U.S. registry would be affected by this AD. Should an operator decide to accomplish the modification, it would take approximately 7 manhours per airplane, and the average labor cost would be $40 per manhour. The cost of the new part would be $193. Based on these figures, the cost impact of the optional terminating action is estimated to be $473 per airplane, or $532,125 for the entire fleet.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 and C-9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending AD 85-11-02, Amendment 39-5068 (50 FR 20896; May 21, 1985), as follows:

A. Revise applicability statement to read:

McDonnell Douglas: Applies to McDonnell Douglas Model DE-9, -10, -20, -30, -40, -50, -80, and C-9 (Military) series airplanes (Fuselage Number 1 through 1242), certificated in any category.

B. Add new paragraph H. to read as follows:

"H. Modification of elevator hydraulic boost cylinder attach rod ends in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 27-262, dated November 27, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, constitutes terminating action for the repetitive inspection requirements of this AD."

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on February 5, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2999 Filed 2-11-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 703

Rule on Informal Dispute Settlement Procedures; Intent to Form Advisory Committee for Regulatory Negotiation

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to form advisory committee for regulatory negotiation.

SUMMARY: The Federal Trade Commission is considering the formation of an advisory committee to develop recommendations for revisions to the Commission's Rule on Informal Dispute Settlement Procedures, 16 CFR Part 703. The committee would be comprised of persons representing the major interests affected by the rule. The committee members would attempt to negotiate a consensus on recommended revisions. This notice contains tentative lists of the interests that would be represented on the committee, parties that might represent these interests, and issues that the committee might consider. The Commission invites public comment on these lists and on the suitability of the rule for regulatory negotiation.

DATE: Comments and suggestions must be received by March 14, 1986.

ADDRESS: Comments and suggestions should be marked "Rule 703 Regulatory Negotiation" and sent to the Division of Marketing Practices, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Convenor/Facilitators:

John A.S. McGlennon, ERM-McGlennon Associates Inc., 283 Franklin Street, Boston, MA 02110, (617) 357-443

Gail Bingham, The Conservation Foundation, 1255 23rd Street NW., Washington, D.C. 20037, (202) 293-4800.

FTC Staff:

David W. Koch, Division of Marketing Practice Federal Trade Commission, Washington, D.C. 20580, (202) 523-3911.

SUPPLEMENTARY INFORMATION:

Background

In Section 110(a)(1) of the Magnuson-Moss Warranty Act ("the Act"), 15 U.S.C. 2310(a)(1), Congress announced a policy of encouraging warrantors of consumer products to establish procedures for the fair and expeditious settlement of consumer disputes through informal dispute settlement mechanisms. To implement this policy, Congress provided in section 110(a)(3) of the Act that warrantors may incorporate into their written warranties a requirement that consumers resort to an informal dispute settlement procedure before pursuing judicial remedies available under the Act for warranty claims. To ensure fairness to consumers, however, Congress directed in section 110(a)(2) that the Commission establish minimum standards for any informal dispute settlement mechanism (IDSM) that is incorporated into a written consumer product warranty. Accordingly, the Commission promulgated the Rule on Informal Dispute Settlement Procedures ("Rule 703"), now codified at 16 CFR Part 703.[1]

Rule 703 is binding only on those who choose to be bound by it. Neither the Act nor the rule requires warrantors to establish an informal dispute settlement mechanism. Moreover, a warrantor is free to set up an IDSM that does not comply with the rule as long as the warrantor does not require consumers to resort to the IDSM before filing claims under the Act. In short, an IDSM must comply with the rule only if the warrantor voluntarily establishes an IDSM and writes into its warranty a requirement that consumers use the IDSM before going to court under the Act.

[1] The Statement of Basis and Purpose for the Rule on Informal Dispute Settlement Procedures appears at 40 FR 60190 (December 31, 1975).

Before 1982, only two warrantors established IDSMs under Rule 703. Since that time, however, several additional IDSMs have been established by automobile manufacturers. Forty states have now adopted "lemon laws" entitling consumers to obtain a replacement or a refund for a defective new car if the warrantor is unable to make the car conform to the warranty after a reasonable number of repair attempts.[2] Paralleling Section 110(a)(3) of the Magnuson-Moss Warranty Act, most lemon laws provide that the consumer may not exercise lemon law rights in court unless the consumer has first presented the claim to the manufacturer's IDSM (if the manufacturer has chosen to establish one). However, those statutes also provide that consumers are required to use the manufacturer's IDSM only if it complies with the FTC standards for IDSMs, as expressed in Rule 703.

Almost all new car manufacturers now participate in some Rule 703 mechanism. In addition, three Rule 703 IDSMs, in the housing industry hear disputes between homeowners and builders who offer warranties on new housing. Outside of the housing and automobile industries, no warrantors have established Rule 703 mechanisms, although some participate in IDSMs operating outside the framework of the rule.

Experience under the existing rule on Informal Dispute Settlement Procedures has given interested parties, including the FTC, an opportunity to evaluate the rule's effectiveness in encouraging the establishment of informal dispute settlement procedures and in ensuring that those procedures are fair and easy to use for consumers. This experience has led to criticism of Rule 703 by warrantors, mechanism operators, consumer groups, and state governments. Some have argued that the rule is unduly burdensome and discourages the formation of new mechanisms as well as hindering the efficient operation of existing ones. Others, by contrast, have asserted that the rule is insufficiently stringent in many respects.

The Commission believes it is necessary to address the problem surrounding Rule 703. The Commission further believes that regulatory negotiation may offer the best means of developing sound proposals for reform.

[2] In most states, it is presumed that a resonable number of repair attempts have been made if (1) the same defect has been subject to repair four or more times within the first year of ownership, or (2) the car has been out of service for repairs thirty or more days during the first year of ownership.

Regulatory negotiation is a process in which representatives of each interest affected by the rule meet publicly under agency sponsorship and attempt to work out a mutually acceptable solution to their problems. The negotiations precede and, if successful, lay the groundwork for a traditional notice-and-comment rulemaking procedure. The agency represents one essential interest in the negotiation, with the same rights and responsibilities as any other interest.

Regulatory negotiation is particularly appropriate in light of the voluntary application of Rule 703. Because of this aspect of the rule, it is important that any revision of Rule 703 consider all competing interests. The regulatory negotiation process should allow for such consideration. Its purpose is to have representatives of all affected interests fully discuss the issues under conditions that provide incentives to narrow or eliminate their differences.

Regulatory Negotiation

A. Feasibility

The staff has engaged the services of two professional mediators to act as "convenors" for a possible regulatory negotiation involving Rule 703. The staff and the convenors have examined the issues and interests involved and have made preliminary inquiries among a broad range of parties to determine whether representatives of all essential interests would agree to participate in such a process. These inquiries have also sought to determine whether it is possible to reach agreement on:

- Individuals to represent those interests;
- The preliminary scope of the issues to be addressed; and
- A timetable for the negotiating process.

On the basis of our preliminary analysis and inquiries, the convenors and the Commission believe that negotiation can succeed with respect to this rule, and that the potential participants listed below could adequately represent the affected interests.

A group formed for the purpose of conducting regulatory negotiation is an "advisory committee," as that term is defined in the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. I §§ 1–15. This notice announces the Commission's present intention to create an advisory committee in accordance with FACA and its implementing regulations. This notice also:

- Lists potential issues thus far identified as appropriate for negotiation;
- Identifies the interests we believe those issues affect;
- Identifies potential participants we have initially determined would adequately represent those interests in the negotiations; and
- Asks for comment on the use of regulatory negotiation in this context and on whether the issues, interests, potential participants, and procedures are adequate and proper.

B. Procedures

The following proposed procedures and guidelines would apply if the Commission decides to go forward with regulatory negotiation. They may be modified as a result of comments received on this notice or during the negotiating process.

1. *Convenor/Facilitators:* John A.S. McGlennon, President, ERM-McGlennon Associates, Inc., Boston, Massachusetts, and Gail Bingham, Senior Associate, The Conservation Foundation, Washington, D.C., would oversee the contemplated regulatory negotiation process. Both are professional third-party mediators with extensive experience in multi-party public policy disputes. Neither has had any involvement with the substantive content or enforcement of Rule 703. They would chair the actual negotiating sessions, assist individual parties in forming and presenting their positions, offer suggestions and alternatives that would help the parties reach consensus, and, if necessary, ask parties to submit additional information or to reconsider their positions.

2. *Committee Procedures:* Under the general guidance of the convenor/facilitators, the parties themselves would establish appropriate detailed procedures for conducting committee meetings. These procedures must, however, comply with the requirements of FACA and with regulations issued by the Commission to implement FACA. The FTC regulations would be published in the **Federal Register** prior to or concurrently with a notice formally establishing the advisory committee, if the Commission decides to form such a committee.

3. *Meetings:* Committee meetings would be announced in the **Federal Register** at least 15 days in advance and would generally be open to the public. Meetings of the full committee would be held approximately monthly in Washington, D.C. As required by FACA, the convenor/facilitators would prepare for the public record minutes of all

advisory committee meetings for approval by the participants.

4. *Participants:* The convenors have recommended twenty-seven parties for membership if an advisory committee is formed by the Commission to develop proposed revisions to Rule 703. The Commission will make a final determination regarding parties based on the comments recieved in response to this notice. The Commission will consider additional parties for membership if it appears that they have a direct stake in the terms of the rule and that their participation would be essential to a successful negotiation. However, the Commission does not believe that every individual or organization actually or potentially affected by Rule 703 must have its own member on the committee. Rather, it is sufficient that each major *interest* affected by the rule is adequately represented on the committee. The group must be kept to a manageable size in order to maximize the chances for efficient operation and successful negotiation. Lists of the major interests thus far identified and possible representatives for each appear later in this notice.

It is important that the members of the negotiating group have substantive expertise and that they represent all significant viewpoints on the issues presented for discussion. They must also be able to represent non-participants who have interests common with their own. It is expected that participants would periodically report the progress of the negotiations to their respective organizations and interest groups. By doing so, the ideas and concerns of non-participants could be taken into account at the negotiating table.

5. *Consensus:* The goal of the negotiating process is consensus. Consensus on any specific issue means that each essential interest represented on the committee concurs in the conclusion reached by the committee with respect to that issue.

6. *Notice of Proposed Rulemaking:* The advisory committee's specific objective would be to agree on the terms of a notice of proposed rulemaking (NPRM) that embodies proposals for a revised Rule 703. If the negotiations were successful, the committee would prepare a report describing the factual basis on which the committee relied in developing its proposals. The Commission agrees, absent extradordinary circumstances and subject to statutory requirements, to incorporate the committee's consensus recommendations in an NPRM initiating a proceeding to amend Rule 703.

7. *Failure to Agree on Recommendations:* If the advisory committee were unable to reach a consensus on any of the issues raised for discussion, the committee would prepare a report identifying the apparent reasons for failure to achieve a consensus on those issues. In the absence of a consensus, the Commission anticipates developing its own proposals incorporating such changes in Rule 703 as it deems appropriate.

Issues for Regulatory Negotiation Involving Rule 703

The convenor/facilitators have solicited the views of potential parties to the negotiation on the issues that would be appropriate for discussion. From these preliminary inquiries and from the FTC's experience with Rule 703, a number of possible issues have been identified. The Commission invites any interested person to suggest other issues relevant to Rule 703. The Commission anticipates that additional issues would be considered by the advisory committee as they arise.

The following list of issues is tentative and is not intended to be an agenda for the advisory committee's deliberations. The advisory committee itself, if formed, will be free to set its own agenda.

Possible Issues

1. Whether the purpose of Rule 703 mechanisms should be consumer satisfaction, enforcement of state lemon laws or other state requirements, or both;

2. Whether existing incentives to establish Rule 703 mechanisms are adequate, and whether other incentives could be built into the rule;

3. How much detail about the mechanism should be provided on the face of the warranty;

4. How the term "advance funding"should be defined;

5. What the rule should provide regarding direct access to the mechanism by consumer;

6. What the composition, qualifications, and training of mechanism decison-makers should be;

7. What the rule's provisions for oral hearings should be;

8. What the time limits on mechanism decision-making should be;

9. What kinds of incidental and/or consequential damages issues the mechanism should consider;

10. What the rule's record-keeping requirements should be, both in terms of quantity and in terms of the types of information that would be useful;

11. How broadly "compliance" with Rule 703 should be defined, and what consequences should follow from failure to comply;

12. Who should determine whether or not a mechanism is in compliance with Rule 703;

13. Whether flexibility should be provided for different approaches to informal dispute settlement for different types of warranted products;

14. Whether features could or should be built into the rule to encourage greater use of mediation as opposed to arbitration; and

15. How to encourage greater uniformity of standards for informal dispute settlement mechanisms.

Essential Interests Affected by Rule 703

Based on its experience and the preliminary inquiries, the Commission believes the following interests, besides the sponsoring agency, should be represented in negotiations to develop proposed revisions to Rule 703:

- Dispute resolution service providers
- New home warranty programs
- Domestic automobile manufacturers
- Automobile importers
- Automobile dealers
- Other major consumer product manufacturers
- Consumer affairs agencies and state Attorney General
- Consumer groups

Potential Parties

The convenor/facilitators, in consultation with the FTC, have tentatively determined that the following parties could adequately represent the essential interests that have been identified thus far. All of those listed have agreed to participate if an advisory committee is, in fact, formed. This list, however, is only tentative. The membership of the advisory committee will not be finally determined until [and unless] the Commission publishes a **Federal Register** notice formally announcing the formation of such a committee.

Sponsoring Agency

Federal Trade Commission

Dispute Resolution Service Providers

Council of Better Business Bureaus, Inc.
American Automobile Association
Major Appliance Consumer Action Panel

New Home Warranty Programs

Home Owners Warranty Corporation
Residential Warranty Corporation

Domestic Automobile Manufacturers

General Motors Corporation

Ford Motor Company
Chrysler Corporation
American Motors Corporation

Automobile Importers

Automobile Importers of America, Inc.
Nissan Motor Corporation

Automobile dealers

National Automobile Dealers Association
American International Auto Dealers Association

Other Major Consumer Product Manufacturers

Association of Home Appliance Manufacturers
National Association of Home Builders

Consumer Affairs Agencies and State Attorneys General

Attorney General of Connecticut
Attorney General of Maryland
Attorney General of Massachusetts
National Association of Consumer Agency Administrators
Union County, New Jersey, Office of Consumer Affairs
U.S. Office of Consumer Affairs

Consumer Groups

Center for Auto Safety
Consumers Union
National Consumer Law Center
Conference of Consumer Organizations.

The Commission invites comment on this list of potential parties. If, in response to this notice, an additional interest, organization or person requests membership or representation in the negotiating group, the FTC, in consultation with the convenor/facilitators, will determine (1) whether that interest, organization or person would be substantially affected by the rule; (2) if so, whether the interest, organization or person would be adequately represented by someone already in the group; and (3) if not adequately represented, whether a representative of that interest, organization or person should be added to the group. Requests for membership or representation must be made in writing by the date appearing in this notice. After reviewing the comments, the Commission will finalize the list of participants.

Final Notice

After evaluating the comments on this announcement and any requests for representation, the Commission will finally determine whether to establish an advisory committee under FACA. If the Commission decides that a committee should be formed, the Commission will announce its decision in the **Federal Register.**

Tentative Schedule

The Commission hopes to announce its decision whether to form an advisory committee by early April 1986. If an advisory committee is established by that time, the first meeting of the committee would take place in late April or early May 1986. The first meeting would be organizational in nature, focusing on dates, times, locations, and procedures for future meetings and on answering any remaining questions of the participants. Negotiating sessions would again approximately one month after the organizational meeting and continue monthly thereafter.

Termination

The Commission plans to dissolve the negotiating group if the participants do not reach consensus within eight months after the first committee meeting. The Commission retains discretion to dissolve the committee at an earlier time if the agency detemines that the committee's activities are not being carried out in the public interest. If the committee dissolves without consensus on an NPRM, the Commission anticipates developing its own proposal to revise Rule 703.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-3054 Filed 2-11-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-35-84]

Income Taxes; Stock Acquisitions and Target Corporation Assets; International Aspects of Section 338; Cross Reference

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that add a new § 1.338-5T, relating to international aspects of section 338, and that amend existing temporary regulations §§ 1.338-1T, 1.338-4T, and 1.338(h)(10)-1T. Section 1.338-1T contains procedural rules and § 1.338-4T provides guidance on miscellaneous substantive matters under section 338, primarily in the domestic context. Section 1.338(h)(10)-1T provides guidance on the operation of section 338(h)(10). Subject to the modifications specifically identified in this document, the text of new § 1.338-5T and of the amendments to §§ 1.338-1T, 1.338-4T, and 1.338(h)(10)-1T also serves as the comment document for this notice of proposed rulemaking.

DATES:

Proposed Effective Date

The regulations are proposed to apply generally to stock acquisitions made after August 31, 1982. The regular exclusion election permitted by the temporary regulations that serve as the comment document for this notice of proposed rulemaking would be eliminated for stock acquisitions that occur subsequent to the date of publication of the final regulations (and that do not occur pursuant to a binding contract in effect on or before that date).

Date for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by April 14, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-35-84), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new temporary regulations § 1.338-5T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR") and amend temporary regulations §§ 1.338-1T, 1.338-4T, and 1.338(h)(10)-1T. The new temporary regulations also amend the table of OMB control numbers in Part 602 of Title 26 of the CFR to reflect the OMB control number assigned to § 1.338-5T.

Section 1.338-1T was published as T.D. 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722), and was amended and redesignated (as § 1.338-1T) by temporary regulations published as T.D. 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086). Section

1.338–1T also was amended by temporary regulations published as T.D. 8021 in the **Federal Register** on April 25, 1985 (50 FR 16402). The temporary regulations published on April 25, 1985, also added § 1.338–4T. Sections 1.338–1T and 1.338–4T were amended by temporary regulations published as T.D. 8068 in the **Federal Register** on January 8, 1986, and by temporary regulations published as T.D. 8072 in the **Federal Register** on January 29, 1986. The temporary regulations published on January 8, 1986, also added § 1.338(h)(10)–1T.

The final regulations are proposed to be based on the new and amended temporary regulations with certain modifications specifically identified herein. They would be added to Part 1 of Title 26 of the CFR. Those final regulations would provide guidance primarily on international aspects of section 338 of the Code, as added by section 224 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. No. 97–248; 96 Stat. 485) and as amended by section 306(a)(8) of the Technical Corrections Act of 1982 (Pub. L. No. 97–448; 96 Stat. 2402) and section 712(k) of the Tax Reform Act of 1984 (Pub. L. No. 98–369; 98 Stat. 946). For the text of the new and amended temporary regulations, see T.D. 8074, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations, as supplemented by this preamble, explains the additions to the regulations.

Regular Exclusion Election Eliminated

It is proposed that the regular exclusion election permitted by § 1.338–5T(c)(2) of the temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** be eliminated in the final regulations. If this position is adopted in the final regulations, the regular exclusion election will not be available if (1) the acquisition date of the actual original target (as opposed to a deemed original target under § 1.338–5T(c)(2)(iv)) occurs subsequent to the date of publication of the final regulations and (2) that acquisition does not occur pursuant to a binding contract in effect on or before that date.

The regular exclusion election under the temporary regulations permits the purchasing corporation to elect, in certain cases, to exclude all foreign corporations (other than foreign corporations treated as domestic corporations under those regulations) from the status of target affiliates for purposes of the stock consistency rule of section 338(f)(1). As a result, such corporations are not subject to a deemed election under section 338(f)(1) when an express election is made for the original target. The preamble to the temporary regulations contains a detailed explanation of the regular exclusion election and of the ancillary consequences of such an election. The temporary regulations provide for a similar exclusion election ("transitional exclusion election") during a transitional period. See § 1.338–5T(j). (The provisions of the temporary regulations relating to the transitional exclusion election would be retained in the final regulations.)

The regular exclusion election is a response to the asserted hardship of imposing full stock consistency in the foreign context. It has been claimed, for example, that full stock consistency would create difficult valuation problems, since a valuation of all of the assets of all foreign subsidiaries subject to deemed elections under section 338(f)(1) would be required. It also has been claimed that full stock consistency would exacerbate the mismatch between asset basis as recognized by the United States and asset basis as recognized by the foreign taxing jurisdiction, since new foreign target's assets generally would have a stepped-up basis for United States tax purposes as a result of the section 338 election but a carryover basis for foreign tax purposes. (Even if the foreign target is not required to file a United States income tax return, the basis adjustment nevertheless is significant for purposes of calculating that target's earnings and profits in the event of actual or deemed distributions to U.S. persons).

It is not clear, however, that full stock consistency would cause a significant hardship. The assets of foreign subsidiaries presumably would be valued for general accounting purposes in any case. As for the mismatch in asset basis, such a mismatch is not unique to section 338 and in some cases actually may be beneficial to taxpayers. (Increased depreciation deductions by new foreign target as a result of an asset basis step-up would decrease its earnings and profits and correspondingly increase the effective rate of foreign tax on its earnings and profits as calculated for U.S. tax purposes.)

Although the applicaton of section 338 to the foreign branch of a domestic target corporation creates problems similar to those encountered by applying section 338 to a foreign subsidiary, the statute does not contemplate an exclusion of foreign branch operations from section 338 consequences. Thus, the regular exclusion election would result in differing tax consequences depending upon whether a U.S. corporation operated abroad through a foreign subsidiary or through a foreign branch. As a matter of general policy, it is believed that tax considerations should be a neutral factor in determinations regarding the form of foreign operations. See, *e.g.*, the deemed paid foreign tax credit under section 902. The regular exclusion election conflicts with that general policy.

The regular exclusion election also conflicts with the general policy of the consistency rules by permitting the purchasing corporaton to exclude all foreign corporations from an express election.

The regular exclusion election adds significantly to the complexity of the temporary regulations. The complexity is necessary in order to preserve appropriate section 1248 consequences and to ensure the proper operation of the consistency rules. See § 1.338–5T (c)(2)(iii)(B) and (c)(3)) (provisions related to the operation of section 1248) and § 1.338–5T (c)(2)(iii)(C), (c)(2)(iv), and (c)(4) (provisions related to the consistency rules).

For the foregoing reasons, it is proposed that the regular exclusion election be eliminated in the final regulations. Comments on this issue would be particularly helpful.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held,

notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests person submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Duane H. Pellervo of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Parts 1.301–1—1.383–3

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

These regulations are proposed to be issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 338 and 7805, respectively).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–2950 Filed 2–6–86; 4:57 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 249

[DoD Instruction 5230.XX]

Presentation of DoD-Sponsored Scientific and Technical Papers at Meetings

AGENCY: Defense.

ACTION: Proposed rule.

SUMMARY: This part provides policy and procedural guidance for considering national security in the dissemination of DoD-sponsored scientific and technical information at meetings, whether such meetings are conducted by the U.S. Government or private organizations.

DATE: Comments should be received no later than March 14, 1986.

ADDRESS: Office of the Deputy Under Secretary of Defense (Research and Advanced Technology), Room 3E114, The Pentagon, Washington, DC 20301–3080.

FOR FURTHER INFORMATION CONTACT: Francis Sobieszcyk, (202) 694–0205.

List of Subjects in 32 CFR Part 249

DoD scientific and technical information, meetings, conferences, classified information, information release and dissemination.

Accordingly, Title 32 is proposed to be amended by adding Part 249 to read as follows:

PART 249—PRESENTATION OF DOD-SPONSORED SCIENTIFIC AND TECHNICAL PAPERS AT MEETINGS

Sec.

Authority: Sec. 1217, Pub. L. 98–94, (10 U.S.C. 140c).

§ 249.1 Purpose.

This part establishes policy for consideration of national security in the dissemination of scientific and technical information in the possession or under the control of the Department of Defense at conferences and meetings.

§ 249.2 Applicability and scope.

This part applies to the Office of the Secretary of Defense (OSD) and activities supported administratively by OSD, the military departments, the organization of the Joint Chiefs of Staff, the defense agencies, and the unified and specified commands (hereinafter referred to collectively as "DoD Components").

§ 249.3 Definition.

Contracted Fundamental Research: Includes grants and contracts that are (a) funded by budget Category 6.1 ("Research"), whether performed by universities or industry; or (b) funded by budget Category 6.2 ("Exploratory Development") and performed on-campus at a university, but for those rare exceptional circumstances where there is high likelihood of disclosing performance characteristics of military systems, or of manufacturing technologies that are unique and critical to defense.

§ 249.4 Policy.

It is DoD policy to:

(a) Encourage the presentation at technical meetings of scientific and technical information generated by or for the Department of Defense consistent with U.S. laws and the requirements of national security. Every effort should be made to develop presentations that are appropriate for delivery to the widest appropriate audience consistent with the sensitivity of the material.

(b) DoD components and personnel to sponsor, attend and participate in scientific and technical and conferences, and to consult with professional societies and associations in organizing meetings that are mutually beneficial.

(c) Allow the publications of unclassified contracted fundamental research to the maximum extent possible. When restrictions are required the normal mechanism for control of information generated during DoD-funded fundamental research in science, technology and engineering at colleges, universities, and laboratories is classification. Other U.S. statutes may restrict release of information, and such restrictions will be imposed in accordance with requirements of those statutes.

(d) Review and, if warranted, prescribe limitations for presentations of DoD employees and applicable DoD contractors. Controls will be used only when appropriate authority exists.

(e) Provide timely review of DoD employee and contractor presentations.

(f) Assist DoD contractors and, when practical, others in determining the sensitivity of or the applicability of export controls to technical data proposed for public disclosure.

(g) Release classified and/or export-controlled DoD information to foreign representatives when such release promotes mutual security or advances the interests of an international agreement or understanding. Presentation of such information in technical meetings attended by foreign representatives is appropriate when the release is made under the terms of existing security arrangements and when the U.S. and receiving government have established an understanding or agreement in that specific or technical area.

§ 249.5 Procedures.

(a) Conferences organized by DoD components, DoD contractors, scientific and engineering societies, and/or professional associations, among others, enhance the value of R&D sponsored by the Federal Government, and require full cooperation of all involved parties to maximize the benefits obtained. In general, national security concerns related to the release of DoD scientific and technical information at meetings

are influenced by two mutually dependent factors; i.e., the sensitivity of the material to be presented, and the identity of proposed recipients of the material. Either or both factors can be adjusted to some degree through consultation among authors, conference organizers, and officials responsible for authorizing release of DoD information. The purpose of this consultation is to ascertain which combination of factors will support the most productive exchange of information consistent with U.S. laws and the requirements of national security. Interaction among affected parties should commence at least six months prior to the meeting date. Elements to be considered in the consultative process include:

(1) *Constraints of Information to be Presented*—Possibilities range from completely unclassified/unlimited through highly classified information. Other considerations include, but are not limited to, proprietary data, export-controlled data, Privacy Act information, and foreign government-provided data. Classified information may only be presented at meetings organized in accordance with DoD Directive 5200.12. [1] Export-controlled DoD technical data may be presented only in sessions where recipients' eligibility to receive such data is established in accordance with 32 CFR Part 250. Release of proprietary information, privacy data, and foreign government-provided data requires approval of the party controlling that information.

(2) *Location and Physical Access Controls*—To a large degree this element is dependent on the type of material to be presented.

(i) Presentations which have been approved for public release may be presented at any location.

(ii) Meetings sponsored by a U.S. Government agency at which export-controlled DoD technical data is to be presented may be held in any location in the U.S. when control of physical access to be sessions is provided by a U.S. Government employee or a contractor specifically tasked by DoD for that duty. Non-government organizations who organize meetings in the United States at which export-controlled DoD technical data is to be presented will ensure that physical access to the presentations is limited to government employees and individuals certified under 32 CFR Part 250 procedures. Presentations of export-controlled DoD technical data in meetings held outside the U.S. may be permitted on a case-by-case basis after review of the situation by DoD

(iii) Classified information may only be presented at meetings held in a secure government or contractor facility, unless a waiver has been granted in accordance with DoD Directive 5200.12. Personnel access controls for classified meetings are also specified in that directive.

(3) *Foreign Access to Meeting*—

(i) For meetings sponsored by the DoD and conducted at a DoD or DoD contractor facility, guidelines for foreign participation are established in DoD Instruction 5230.17, [2] and DoD instruction 5230.20. [3]

(ii) Determining access to meetings sponsored by organizations other than DoD is the sole responsibility of those organizations.

(iii) DoD may wish to release export-controlled DoD technical data to certain foreign nationals at unclassifed meetings sponsored and conducted by non-government societies and associations in order to advance the interests of an international agreement or understanding. Release by DoD will be pursuant to appropriate exemptions to the International Traffic in Arms Regulations (22 CFR Part 126). The visit request procedures established in DoD Instruction 5230.20 will be used to inform the requestor and the meeting sponsor of the decision to release the information to the designated individual(s) and conditions pertaining to such release.

(b) DoD review is required by DoD Directive 5230.9 [4] for all presentation of DoD employees to be made outside the U.S. Government. DoD contractors are required to submit proposed presentations for DoD review if that is a specific contractual requirement.

(c) Proposed presentations will be reviewed to:

(1) Determine what information (if any) in the submitted paper and/or abstract is subject to security classification, or is subject to withholding from public disclosure under DoD Directive 5230.25 [5], or is otherwise restricted by statute, regulations or DoD policy.

(2) Recommend specific changes, if any, to allow the paper to be presented as requested.

(3) Indicate on the document its releasibility in original and altered versions.

(4) Provide information on appeal procedures to be followed if requested approval is denied.

(d) Reviews will be completed as speedily as possible after receipt of the document by an appropriate review authority. Except in rare and exceptional cases, reviews will be completed in:

(1) 10 working days for all abstracts.

(2) 20 working days for papers submitted for presentation at sessions which will have unlimited access.

(3) 30 working days for papers submitted for presentation at unclassified session which will have limited access.

(4) 30 working days for papers submitted for presentation at sessions which will be classified.

(5) If the review cannot be completed in time, an explanation will be provided.

(e) DoD may review for national security concerns other presentations submitted voluntarily and (1) inform the author that DoD has no objection to public presentation or (2) inform the author that DoD advises that presentation in a public forum would not be in the interest of national security, and provide appropriate reasons for the determination. The former determination, in paragraph (e)(1) of this section, satisfies an exemption from requirements for government review under the International Traffic in Arms Regulations. The latter determination, in paragraph(e) of this section, does not legally bar presentation. It is an advisory statement that, for the presentation concerned, DoD will not authorize public release, thereby premitting presentation under the aforementioned exemption. Such DoD action does not preclude recourse through normal State Department procedures.

(f) Authors who are DoD employees or DoD contractors will submit full text and/or abstract of paper for review before submitting it for presentation at meetings outside DoD. Requests for review will identify the conference sponsor(s), site, and access restrictions specified by the session organizers, and will state whether the paper is for presentation at a session which is to be unclassified with unlimited access, unclassified with limited access, or classified (specify level of classification).

(g) When required, a full text of any paper shall be submitted for public and/or foreign disclosure clearance in sufficient time to allow adequate review and possible revision. Authors should allow adequate time for their presentation to reach the appropriate

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19129 Attention code 301.

[2] See footnote 1 to § 249.5(a)(1).

[3] See footnote 1 to § 249.5(a)(1).

[4] See footnote 1 to §249.5(a)(1).

[5] See footnote 1 to §249.5(a)(1).

review authority in addition to the review targets set in paragraph (d) of this section.

(h) At the time of submission of the full text of the presentation to the Conference Program Committee, DoD authors should state that their papers have been approved for presentation at the meeting and specify the security level or degree of access control required. When submitting abstracts that have been cleared for release, authors should indicate when and what kind of approval is expected on the presentation in its final form.

(i) In accordance with DoD Directive 3200.12[6] copies of proceedings and/or reprints of papers sponsored by DoD for all scientific and technical meetings will be provided to the Defense Technical Information Center for secondary distribution.

§249.6 Responsibilities.

(a) The *Under Secretary of Defense for Research and Engineering (USDRE)* shall have overall responsiblity for the implementation of this part.

(b) The *Deputy Under Secretary of Defense for Research and Advanced Technology* shall:

(1) Administer and monitor compliance with this Instruction.

(2) Establish procedures allowing DoD sponsorship of foreign national attendance at non-government meetings as described in paragraph 249.5 (a)(3)(iii).

(3) Provide, when necessary, technical assistance to DoD Components in determining sufficiency of protection of unclassified technical information that is to be presented at meetings.

(4) Provide, upon request, information and advice regarding controls on unclassified DoD information to scientific and engineering societies and professional associations.

(c) The *Under Secretary of Defense for Policy* shall develop and promulgate, as required, policy guidnace to DoD Components for implementing this part.

(d) The *Deputy Under Secretary of Defense (Policy)* shall establish, administer and monitor compliance with policies and procedures for release of classified information at meetings.

(e) The *Heads of DoD Components* shall promulgate and implement this part within 180 days.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 6, 1986.

[FR Doc. 86-3055 Filed 2-11-86; 8:45 am]

BILLING CODE 3810-01-M

[6] See footnote 1 to §249.5(a)(1)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2820-3]

Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry

Correction

In FR Doc. 86-1214 beginning on page 2996 in the issue of Wednesday, January 22, 1986, make the following corrections:

1. On page 3016, third column, third complete paragraph, second line, "3875 m^3" should have read "38 m^3".

2. On page 3021, first column, in § 60.710 (a)(2) and (c), "(the date of publication of the final rule in the **Federal Register**)" should have read "(date of publication in the **Federal Register**)" which would have been computed to read "January 22, 1986". Also, make the same correction on page 3022, first column, in § 60.712(c).

3. On page 3025, third column, in § 60.717(c)(5), fifth line, "which" should have read "the most."

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PR Docket No. 86-38; RM-5058; FCC 86-65]

Creation of a New Consumer Radio Service

AGENCY: Federal Communications Commission.

ACTION: Inquiry.

SUMMARY: This document requests public comment on the best approach to provide for unmet personal communications needs within the two 200 kHz frequency segments now assigned to the General Mobile Radio Service (GMRS). Public comment is sought because the Commission is considering creating a new Consumer Radio Service to more fully accommodate personal radio needs.

DATES: Comments may be filed on or before May 30, 1986. Reply comments may be filed on or before June 30, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 95

Communicatons equipment, General Mobile Radio.

Notice of Inquiry

In the Matter of Creation of a new Consumer Radio Service. (PR Docket No. 86-38, RM-5058).

Adopted: January 30, 1986.
Released: February 5, 1986.

By the Commission.

Introduction

1. We are considering significant changes in the Part 95, Subpart A General Mobile Radio Service (GMRS). Our purpose in issuing this Inquiry is to seek public comment on the best approach to accommodate unmet personal communications needs within the two 200 kHz frequency segments now assigned to the GMRS.[1] This document sets forth an alternative Consumer Radio Service which would emphasize transceivers carried on the person in order to respond to the communications needs of the contemporary citizen living and traveling in our mobile society.

Background

2. The present GMRS has roots extending back to May, 1945, when we allocated the 460-470 MHz frequency band to a new "Citizens Radio Service" in Docket 6651. We formulated rules to govern this service from 1947 through 1949 in Dockets 8449 and 9119. These rules provided for licensing two types of stations—Class A and Class B.

3. In 1958 in Docket 11994 much of the 460-470 MHz band previously available for Class A and Class B use was reallocated to other services. Class B stations were abolished. Class A operation was redefined and confined to sixteen specific channels, eight frequencies in each of two 200 kHz frequency segments. In Docket 20120, Class A operation was renamed the General Mobile Radio Service (GMRS). The rules governing the GMRS were updated and codified in PR Docket No. 82-84 in July, 1983.

4. Notwithstanding the evolution of three distinct Part 95 Personal Radio Services in Docket No. 20120 certain personal user communications needs remain unfulfilled. The GMRS provides

[1] The Personal Radio Steering Group (PRSG) filed a petition for rule making (RM-5058) on June 11, 1985, which sought to restructure the GMRS to address additional personal communications needs. PRSG and Dow Chemical Telecommunications Corporation submitted comments. M.C. Trahos filed reply comments. We will include PRSG's petition and the comments and reply comments filed thereon as comments in this proceeding.

relatively high quality two-way communications, but at considerable cost in terms of both price and spectrum consumption. The Radio Control (R/C) Radio Service, a one-way non-voice service for the remote operation of devices, attracts mostly model aircraft, model boat and model car enthusiasts. The Citizens Band (CB) Radio Service provides for short-range two-way personal and business communications, but requires continuous monitoring to hear a directed message. Both R/C and CB are in frequency bands subject to adverse propagation phenomena.

The Inquiry

5. We believe there is a need to restructure the GMRS into an affordable Consumer Radio Service. It would allow one person to contact another specific person over a short distance and conduct a brief voice conversation. It would allow, for example, two or more persons attending a large outdoor event together to keep in touch when they are out of sight of each other. Each person would thereby have greater mobility without losing contact with the other. Persons attending picnics, sporting events and parades should find such a device very useful. Campers, hikers, cyclists, commuters, shoppers, travelers, and participants in rallies, political campaigns and public service organizations such as REACT and neighborhood watch groups have similar needs. In each case, the need is for personal directed communications as the only possible means of contact between people.

6. The use best suited to personal communications needs is a critical component to design of a restructured GMRS. It appears that most of the personal communications needs we have discussed would be most suitably addressed by a service providing two-way voice communications between persons with transceivers carried on the person. We seek comment on whether this is indeed the optimum configuration. The type of equipment designed for the service could obviate the need to rely upon user familiarity with detailed operating regulations for rule compliance, particularly with regard to the prevention of interference. We could require that the equipment be user transparent. That is, rather than relying upon operator discipline and significant levels of Commission enforcement to prevent interference and achieve rule compliance, we could require equipment designed to control users actions automatically.

7. We envision units carried on the person for short-distance low-power communications that would, if they were readily and inexpensively available, assist people in the conduct of everyday living. While we do not contemplate that this service would be intended to duplicate those services which provide for vehicular mobile radios, there would be nothing to prevent a person from carrying the unit into a vehicle. This type of a unit could provide off-the-shelf technology which would allow people to have flexibility in the use of the equipment.

8. We believe the needs we have identified require directed communications and affordable portable equipment. The communications must include a reasonable degree of privacy and offer security from interference. The characteristics of the service should be designed to give it maximum utility for a variety of everyday applications. Thus, the equipment should be easy to use, and should have most operating functions built in to make it user transparent.

9. *System Technology.* We seek comment on the different methods available to maximize the number of uses in the two 200 kHz bands. We ask respondents to consider what range is needed to accommodate the envisioned personal communications requirements and what degree of service reliability is necessary within that range. The answers to these questions will help us determine whether to provide selective calling and whether to have single or paired frequency channels. We seek comment on the most appropriate trade-off between range and channel reuse in this service.

10. We encourage commenters to express their best judgments about suitable methods to maximize user transparency. We believe an essential aspect of this service would be automatic frequency selection in lieu of frequency assignment of "party" channels.

11. We ask for comments whether one-way services should be permitted if they can be accommodated without being detrimental to two-way services. We request commenters to address how the choice of one configuration over another would affect other choices to be made in a new Consumer Radio Service. If one or more digital channels are the best choice for automatic frequency selection, should excess capacity on these channels be available for paging or other appropriate uses and if so how should such functions be structured?

12. We request comment on the suitability of various emission modes for this service, particularly with regard to accomplishing minimum channel spacing and maximizing frequency reuse. We encourage comments on spectrum efficiency and on spectrum-saving technology. The relative merits of AM, FM, sideband technologies, and analog and digital technologies capable of providing voice transmission should be discussed. This technical analysis should address the usual parameters for each mode of operation: transmitter and receiver requirements, frequency tolerance, harmonic and spurious attenuation, frequency reuse considerations and the cost (both to the manufacturer and to the consumer) to obtain each specification. We request comment from equipment manufacturers on the type of market and likely demand for any such personal use-oriented equipment at 460–470 MHz. We wish to know the interrelationships of market size and equipment cost.

13. *Equipment Technology.* We wish input on the extent to which current technology would support narrower channels and the effect reducing the channel spacing would have upon equipment costs. Should we set the initial channel spacing at its practical minimum now, or should we consider a wider channel spacing and then redivide channels when technology has sufficiently advanced? We seek comment on whether choosing the latter course would minimize the impact of equipment frequency stability on initial equipment cost or result in premature obsolescence of equipment. We also seek comment on the advantages and disadvantages of equipment designed to facilitate the required upgrading in the event of such channel redivision.

14. Are certain techniques and innovations likely to improve the GMRS so much that they would attract so many users that there would be unacceptable levels of congestion? If so, should such techniques and innovations be rejected, or should we instead consider new technologies to increase the number of channels available to accommodate these techniques and innovations? Should we consider rules to limit use in congested metropolitan areas? Can we include certain techniques and innovations on the premise that any congestion would be self-limiting, with those desirous of, eligible for and able to pay for higher quality service choosing other alternatives?

15. *Interconnection.* In 1978 we decided to bar interconnection to the public switched telephone network in the GMRS because we saw no "practical way to accommodate a potentially large demand for such service with merely 8 pairs of frequencies." *First Report and Order,* Docket No. 20846, 69 FCC2d 1831, 1840

(1978). It is our preliminary view that the same practical considerations militate against consideration of an interconnected service in only 400 kHz of available spectrum. While we do not discourage comment on whether there is any unmet need for interconnected personal communications which can be practically accommodated in a new Consumer Radio Service, we do not view the restructured GMRS as a new cordless telephone service.

16. *Equipment compatibility.* A restructured GMRS designed to accommodate large numbers of personal users in a relatively small portion of spectrum might require standardized protocols or algorithms for intersystem compatibility to permit use of the equipment in locations other than the user's normal service area. This would also assure that one user could communicate with any other user. We request respondents to address the question of equipment compatibility and associated costs.

17. *Emergency channels.* The Citizens Band Radio Service dedicates one channel (Channel 9) for emergency or travelers' advisory purposes. The GMRS has no current similar dedicated channel, but there are some emergency and safety-of-life or property communications in GMRS spectrum. We request comment on whether a restructured GMRS should include one or more selectable or priority channels for emergency or travelers' advisory purposes, or for coordination and intercommunication among emergency teams. We also seek comments on methods for assuring that non-emergency communications would not occur on these channels.

18. *Licensing and Regulation.* In the GMRS we license systems consisting of one or more transmitting units used by station operators to communicate messages. We do not wish to issue individual user licenses in a new Consumer Radio Service.[2]

19. Not issuing individual user licenses would probably require type acceptance of transmitters for a new Consumer Radio Service with specifications on output power, frequency stability, frequency coverage (channels), automatic channel selection, output bandwidth and modulation technique. However, this would eliminate the need for users to have the technical knowledge required to recognize any interference potential of their equipment or to remedy interference problems. We invite discussion.

20. While we anticipate that most of the equipment for the service we are considering would be carried on the person, we do not rule out the possibility that we might authorize certain land stations that would have greater authorized power, higher permissible antenna height, or possibly even the capability to act as a repeater. We seek comment on whether such a unit could be as user transparent as the basic unit, and, if not, whether this type of equipment would require licensing even if we did not generally license users in a restructured GMRS.

21. We also seek comment on personal and commercial use sharing in this spectrum. We wish to know whether the two uses have been compatible in the GMRS and whether they would be compatible under the concept advanced in this proceeding.

22. *Transition.* Any significant change in the nature of the GMRS or the permissible equipment in a restructured GMRS would of necessity have a large impact upon current GMRS licensees. We seek comment on how we should accommodate current GMRS licensees if we decide to restructure the GMRS. We could grandfather their operations on a permanent or temporary basis. Any grandfathering clause could be tied to a date certain, or could be tied to the license term. We think that current operations should be permitted until such time as the industry has had an adequate opportunity to develop and market new equipment for a restructured GMRS. Current GMRS licensees should be given opportunity to conform to the new rules or to find a suitable communications alternative. We seek comment on all of these considerations.

23. *Economic Issues.* We also want information on costs associated with a restructured GMRS. Will the market size be sufficient to provide incentive for equipment development? What is the projected cost demand relationship? Is the required technology available and manufacturable in volume at reasonable cost? Can anticipated demand be balanced against the available spectrum?

Conclusion

24. We seek information on the different types of usage desired, the maximum number of channels that can be obtained from the various technologies, the number of channels (if any) that should be reserved for particular usage, desirable channel bandwidths and spacings, and any band planning or coordinating necessary to accommodate the various uses in a restructured GMRS. This list, and the entire discussion above, is not all-inclusive. We encourage comments on any matter relevant to this proceeding.

25. Authority for issuance of this Notice is contained in sections 4(i), 303(r) and 403 of the Communications Act of 1934, as amended (47 U.S.C. 154(i), 303(r) and 403). Pursuant to applicable procedures set forth in Sections 1.415, 1.419 and 1.430 of the Commission's Rules (47 CFR 1.415, 1.419 and 1.430), interested parties may file comments on or before May 30, 1986 and reply comments on or before June 30, 1986.

26. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

27. For information concerning this proceeding contact John J. Borkowski, Federal Communications Commission, Washington, DC 20554 (202) 632-4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-3008 Filed 2-11-86; 8:45 am]

BILLING CODE 6712-01-M

[2] Authority for operation of radio stations in a Consumer Radio Service without individual licenses is derived from 47 U.S.C. 307(e), which authorizes such operation in the citizens band radio service. Subsection (3) provides that in this context "citizens band radio service" shall have the meaning given to it by rule. A Consumer Radio Service created for the use of the general public would also be a citizens band radio service. See 47 CFR 95.401.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Denial of a petition to undertake rulemaking.

SUMMARY: On August 8, 1985, the Fish and Wildlife Service (FWS) published a Notice of Receipt of a petition to undertake rulemaking (50 FR 32099) submitted by Safari Club International (SCI). SCI requested several modifications to 50 CFR Part 18 (Marine Mammal Protection Act implementing regulations) that would require periodic review of the status of marine mammal species and a determination on whether the moratorium on the taking and importation of any of these species should be waived. Under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, there is a strict moratorium on taking and importing marine mammals, unless one of several limited exceptions applies. Section 101(a)(3) of the MMPA provides that the Secretary, under certain circumstances consistent with the purposes and policy of the MMPA, may waive the moratorium for particular marine mammal species or population stocks. Under the SCI proposal, waivers, if not implemented within two years of publication of a proposed rulemaking under sections 101(a)(3) and 103 of the MMPA, would be withdrawn not later than thirty days thereafter. The FWS solicited comments on the merits of the SCI petition in order to determine whether or not to propose a rule to amend the regulations in 50 CFR Part 18. This a notice of denial of that petition.

ADDRESS: Requests for information on this Notice should be addressed to the Chief, Division of Wildlife Management, Room 514, Matomic Building, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy W. Sowl, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC, Telephone 202/632–2202.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1985, the SCI petitioned the Secretary of the Interior, as provided under the Administrative Procedure Act (APA) (5 U.S.C. 553(e)), for rulemaking requiring the FWS to conduct a periodic review of the status of marine mammal species and to determine whether the moratorium on any of these species should be waived. Specifically, the petitioner requested that the FWS implement six changes to 50 CFR Part 18. The proposed changes are as follows: (1) Add a new subpart to 50 CFR Part 18 requiring a review of the status of marine mammal species at least once every five years to determine whether the MMPA (16 U.S.C. 1361–1407) moratorium on the taking and importing of marine mammals and marine mammal products should be waived for any species; (2) with respect to the five-year review or waiver proceeding, amend § 18.74 of Title 50 by requiring the Director to publish the substance of any proposed waiver or five-year review in appropriate scientific journals; (3) amend 50 CFR 18.91(c) by adding the requirement that final regulations waiving the moratorium with respect to any species or marine mammal, or population stock thereof, will be published in the **Federal Register** not later than two years after the date of publication of the notice of proposed waiver; (4) if a final regulation is not adopted within this two-year period, the Director will published a notice of withdrawal in the **Federal Register** not later than 30 days after the end of this period; (5) the Director will not prepare a regulations waiving the moratorium with respect to any species of marine mammals, or population stock thereof, for which a proposed regulations has been withdrawn unless he receives sufficient new information to warrant the proposal of a regulation, or unless three years have elapsed since the withdrawal of a prior proposed regulations to waive the moratorium; and (6) publication in the **Federal Register** of any final regulation waiving the moratorium will include a summary of the data on which the regulations is based and must show the relationship of the data to the regulations.

Public Comments

The FWS received three letters commenting on the petition.

Comment: The Alaska Legal Service Corporation (ALSC) supported in part, the SCI proposal to establish periodic review of marine mammal species for the purpose of potential waiver of the moratorium on taking. They also, stated that the primary purpose expressed by Congress in enacting the MMPA was to protect and foster the health of marine mammal populations. The ALSC stated that what the SCI apparently proposes is that, in the case of some species, the purposes of the MMPA have been largely achieved and with respect to the sea otter they concur in this proposition. The ALSC went on to say that a proposal such as that put forth by the SCI would require the Secretary to undertake studies and obtain the evidence required to make sound decisions in these areas. According to the ALSC, it is not safe to assume that a blanket moratorium on taking is always in the best interest of a species or those that share its ecosystem. For that reason, the ALSC supports the mandatory periodic review of the status of marine mammal populations.

Responses: The MMPA does not require status reviews to be conducted on a set schedule. The MMPA "authorizes" and "directs" the Secretary to conduct reviews on the status of species "from time to time." The Secretary is free to initiate steps to waive the moratorium when a legally sufficient request to do so has been submitted by another party or when, based upon agency review of a particular situation, sufficient data exists to justify agency consideration of the propriety of a waiver.

As a matter of policy, Congress has determined that a blanket moratorium on the taking and importing of marine mammal species should exist unless and until the Secretary waives such moratorium in accordance with carefully prescribed standards. In the case of the sea otter in Alaska, existing procedures are adequate to evaluate any proposal to waive the taking moratorium for that subspecies.

Comments: The Center for Environmental Education (CEE) stated that there is no legal mandate in the MMPA for such a review to be held, although the Act does give the Secretary discretion to carry out such a review. The CEE believes that a specific waiver of the moratorium is clearly the intention of the petitioner and that the petitioner should, therefore, justify such a waiver. The CEE believes that the cost for conducting such a review, holding hearings and promulgating regulations should be borne by the petitioner. The CEE recommends that the FWS deny this petition.

Responses: The FWS notes that the administrative costs involved in reviewing a waiver proposal, holding hearings, and promulgating regulations must, by law, be borne by the FWS. The FWS also notes that SCI's petition did not request a specific waiver of the moratorium to take or to import a marine mammal species or population stock. Except for the above reservations, the FWS agrees with the CEE comments.

Comments: The Marine Mammal Commission (MMC) provided extensive comments on each aspect of the petition and recommended that the petition be denied in its entirety. Their discussion of the six elements of the petition is set out, in part, below.

1. "The Marine Mammal Protection Act does not require status reviews to be conducted on a set schedule. Instead, it 'authorizes' and 'directs' the Secretary to conduct reviews on the status of species 'from time to time. . . .' 16 U.S.C.

1371(a)(3)(A). The apparent intent of this section is to provide the Secretary with flexibility to take action, whenever it comes to his attention that it is appropriate to do so, to waive the moratorium. Under this flexible approach, the Secretary is free to initiate steps to waive the moratorium when a legally sufficient request to do so has been submitted by another party or when, based upon agency review of a particular fact situation, it is determined that such action would be consistent with the Marine Mammal Protection Act. Petitioner has set forth no compelling reason why this workable statutory scheme should be abandoned in favor of the more inflexible procedure they propose."

The MMC questioned the legality of the proposed status review procedure and noted the considerable administrative burdens that such a procedure would impose on the FWS. Further, the MMC stated that much of the information sought by SCI is already available from the Fish and Wildlife Service's annual reports prepared under Section 103(f) of the MMPA and from regular species-specific reviews prepared by the FWS.

2. "Even if the Service grants Petitioner's five year status review request, we consider it unnecessary to publish notice in scientific journals. **Federal Register** notice should suffice for purposes of notifying interested parties of agency action under the Marine Mammal Protection Act, and there is no apparent reason to depart from this practice in the case of a five year status review. Such a requirement also could establish an undesirable precedent requiring journal publication of other Marine Mammal Protection Act and Endangered Sepcies Act actions. The request to amend 50 CFR Part 18 for this purpose should therefore be denied."

3. "There is no requirement in the Marine Mammal Protection Act that proceedings on a waiver be completed within a specified time period. Sufficient time limitations on conducting a waiver rulemaking are already contained in the Service's regulations in 50 CFR Part 18, Subpart G. Provided that scheduling problems do not arise, it is likely that most waiver proceedings would be completed within Petitioner's requested two year time frame. It is possible, however, that complicated waiver proceedings would require more time to complete. In such a situation, it would be contrary to section 101(a)(3)(A) of the Act to require by regulation that a waiver review be terminated before the Secretary has had an opportunity to 'determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product. . . .' 16 U.S.C. 1371(a)(3)(A). For this reason, and because there is no apparent benefit to be derived from such a limitation, the Commission recommends that this request be denied."

4. "As noted above, it is possible that adequate review of a waiver request will require more than two years. In such an instance, it would be inappropriate, if not contrary to the requirements of section 101(a)(3)(A) of the Marine Mammal Protection Act, to mandate 'withdrawal' of a waiver request at the end of the two year period. Section 101(a)(3)(A) requires the Secretary to 'adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111' of the Marine Mammal Protection Act with respect to each proposed waiver. 16 U.S.C. 1371(a)(3)(A). This mandatory administrative review and decision-making procedure should be allowed to run its course, regardless of the amount of time required. The request to amend 50 CFR Part 18 for this purpose should therefore be denied."

5. "There is no apparent need for such a regulation [to require that a proposed waiver may not be reproposed unless new information is received or unless three years have elapsed from withdrawal of the prior proposal]. Moreover, as Petitioner has noted, section 101(a)(3)(A) authorizes and directs the Secretary, from 'time to time,' to take action, in appropriate cases, to waive the moratorium. *Id.* Petitioner's proposed amendment could produce a result that is inconsistent with these requirements by imposing a mandatory three year period, instead of the Act's more flexible 'from time to time' authorization. Moreover, section 101(a)(3)(A) requires that such action be taken 'on the basis of the best scientific evidence available.' Petitioner would replace this requirement with a 'sufficient new information standard,' which also could produce a result that is inconsistent with the Act. The request to amend 50 CFR Part 18 for this purpose should therefore be denied."

6. "This requirement [that a final rule include a summary of the data supporting the waiver] is unnecessary. Section 101(a)(3)(A) requires that the procedures of section 103 of the Marine Mammal Protection Act be followed when promulgating waiver regulations. Section 103(d)(3) requires that the Secretary publish and make available to the public at the time of publication of a notice to waive the moratorium 'a statement describing the evidence before the Secretary upon which he proposes to [base] such regulations. . . .' 16 U.S.C. 1373(d)(3). Such publication should satisfy Petitioner's request on this point. In addition to this Marine Mammal Protection Act requirement, the general rulemaking requirements of the Administrative Procedure Act also would require that a summary similar to that proposed by the Petitioner be included in the proposed and final regulations. Petitioner's request on this point would therefore achieve no useful purpose and should be denied."

Response: The FWS agrees with the comments of the Marine Mammal Commission, except that the FWS believes that a properly-crafted, formal status review procedure could be lawfully implemented under the MMPA. However, the FWS agrees with the MMC that the existing regulations adequately provide for reviews of the status of marine mammal species and that the regulatory and administrative burdens of SCI's proposal are not justified.

Discussion

The FWS had denied the SCI's petition based on the determination that the MMPA does not require that status reviews be conducted on a specific schedule; rather, it directs that such reviews be conducted "from time to time." This aspect of the statute gives the FWS authority to review the status of species and to initiate waiver proceedings prescribed in the MMPA at any time that evidence is found that supports a waiver. The FWS believes that administrative resources can best be utilized if waiver proceedings are initiated only when there is an indication that a waiver may be appropriate or when a specific proposal is under consideration. The existing procedures have proven to be satisfactory for previous considerations of waviers of the moratorium, and the FWS has determined that the existing statutory scheme should not be abandoned in favor of the more inflexible procedures proposed in the petition.

The FWS has determined that the existing regulations regarding section 103(d) proceedings on proposed waivers of the moratorium are in conformance with the MMPA and the APA. Many of SCI's proposed changes to the statutory waiver procedures (e.g., deadlines, limitation on reproposal) are legally

precluded by the MMPA. The existing regulatory requirement of publishing notice of wavier proceedings in the **Federal Register** provides for public participation in the process and preserves due process required by the APA. The Petitioner's recommendation to include a "summary by the Director of the data on which said regulations are based . . . ", is provided for by the MMPA and has been adhered to by the FWS in all previous waiver proceedings.

For these reasons, the petition of Safari Club International is denied.

List of Subjects in 50 CFR Part 18

Administrative practice and procedures, Alaska, Exports, Imports, Intergovernmental relations, Marine Mammals, Transportation.

Dated: February 3, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-3019 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 29
Wednesday, February 12, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 7, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W, Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn.: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- *Agricultural Marketing Service*

Irish Potatoes Grown in Colorado, Marketing Order No. 948. Not agency report forms but administrative committee forms. Recordkeeping; annually. Businesses or other for-profit; 102 responses; 779 hours; not applicable under 3504(h). James Smith (202) 447–4140.

- *Food and Nutrition Service*

WIC Monthly Financial and Program Status Report, FNS–498, Monthly, State or local governments; 1,044 responses; 21,660 hours; not applicable under 3504(h). Chris Lipsey (703) 756–3710.

- *Foreign Agricultural Service*

Export Sales of U.S. Agricultural Commodities, FAS–97, –98, –99, –100, On occasion; Weekly; Quarterly, Businesses or other for-profit; 17,054 responses; 20,317 hours; not applicable under 3504(h). Richard E. Passig (202) 447–3273.

Reinstatement

- *Agricultural Stabilization and Conservation Service*

7 CFR Part 1464, ASCS 807, Annually, Individuals or households; 220,000 responses; 22,000 hours; not applicable under 3504(h). Donald M. Blythe (202) 447–2715.

- *Food and Nutrition Service*

7 CFR Part 220, School Breakfast Program, Recordkeeping; Annually, State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 591,676 responses; 5,623,628 hours; not applicable under 3504(h). Marian Stroud (703) 756–3600.

Jane A. Benoit,

Departmental Clearance Officer.

[Fr Doc. 86–3102 Filed 2–12–86; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Draft Environmental Impact Statement; Pacific Northwest Region

This Notice of Intent revises and updates a March 19, 1985, published revised Notice of Intent. That Notice identified a revised schedule for publication of Draft Environmental Impact Statements (DEIS's) for Pacific Northwest Region National Forests' Land and Resource Management Plans. The previous schedule indicated that the 19 Forests would publish their DEIS's by September 1985.

As a result of a decision to prepare a supplement to the Pacific Northwest Regional Guide providing minimum management requirements for spotted owl habitat management, those Forests in western Washington and western Oregon which have issues related to the spotted owl must wait for completion of that analysis before publication of Forest Plan DEIS's. Also, due to a variety factor, the Forest Plan analysis has taken longer than anticipated. DEIS's for the 19 National Forests in the Pacific Northwest Region are now expected to be published on the following schedule:

National Forest	DEIS date
Colville, Colville, WA	September 1986.
Deschutes, Bend, OR	January 1986.
Fremont, Lakeview, OR	July 1986.
Gifford Pinchot, Vancouver, WA	September 1986.
Malheur, John Day, OR	Do.
Mt. Baker-Snoqualmie, Seattle, WA	Do.
Mt. Hood, Gresham, OR	August 1986.
Ochoco, Prineville, OR	June 1986.
Okanogan, Okanogan, WA	March 1986.
Olympic, Olympia, WA	June 1986.
Rogue River, Medford, OR	August 1986.
Siskiyou, Grants Pass, OR	July 1986.
Siuslaw, Corvallis, OR	June 1986.
Umatilla, Pendleton, OR	July 1986.
Umpqua, Roseburg, OR	September 1986.
Wallowa-Whitman, Baker, OR	February 1986.
Wenatchee, Wenatchee, WA	April 1986.
Willamette, Eugene, OR	September 1986.
Winema, Klamath Falls, OR	Do.

Final EIS's should be completed within 9 to 12 months following the DEIS for each National Forest.

Dated: February 3, 1986.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 86–3022 Filed 2–11–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Commerce.

SUMMARY: The Family, Neighborhood, and Workplace Committee of the Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on February 28, 1986. The

Presidential Board of Advisors was established on August 8, 1985 to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

Time and Place: Friday, February 28, 1986, 11:00 a.m., at the National Center for Neighborhood Enterprise, 1367 Connecticut Avenue, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: February 6, 1986.

Nancy J. Olson,

Director, Office of Business Liaison.

[FR Doc. 86–3108 Filed 2–11–86; 8:45 am]

BILLING CODE 3510–BW–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumpting and Countervailing Duty, Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct admininstrative reviews of various antidumping and countervailing duty orders, findings, and suspended investigations. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a) (5) and 355.10(a)(2) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspended investigations.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antiduming and countervailing duty orders, findings, and suspended investigations. We intend to issue the final results of these reviews not later than February 28, 1987.

	Periods to be reviewed
Antidumping Duty Proceeding and Firms	
Sugar and syrups from Canada:	
Dom foods	4/83–03/84
Lantic sugar	4/82–03/85
Lentzco	4/82–03/85
Redpath sugars	4/82–03/85
Kraft condenser paper from Finland:	
Tervakoski	9/01/82–06/23/83
Viscose rayon staple fiber from France:	
Achille Bayart	3/84–02/85
Strontium nitrate from Italy:	
SABED	6/01/83–05/14/84
Calcium pantothenate from Japan:	
Nagase	1/82–05/82
M. Gurvey and Berry (Canada)	6/82–08/83
Chemeta BV (Netherlands)	6/82–12/84
BMP (West Germany)	1/82–08/83
Ultramar Sievers (West Germany)	7/81–03/82
Certain high capacity pagers from Japan:	
Matsushita	9/83–08/85
NEC	9/83–08/85
Fishnetting of manmade fibers from Japan:	
Fukui fishing net	10/83–05/85
Hakodate	6/82–04/84
Hakodate/Mitsui	10/83–04/84
Hirata Spinning	6/82–05/85
Inagaki/Moribun Shoten	6/82–04/84
Momoi	10/83–05/85
Moririn	6/82–05/85
Morishita	10/83–05/85
Morishita/Mitsui	10/83–05/85
Nippon Kenmo	10/83–04/84
Osada/Moribun Shoten	6/82–04/84
Osada/Nichimen	6/82–09/83
Taito Seiko	5/84–05/85
Taito Seiko/Makamura Suisan	6/82–05/85
Yamaji	6/82–04/84
High powered amplifiers from Japan:	
NEC	7/84–06/85
Steel wire strand for prestressed concrete from Japan:	
Shinko wire/all exporters (except Mitsui)	12/82–11/84
Suzuki metal/all exporters (except Mitsui)	12/82–11/84
Tokyo rope/all exporters (except Mitsui)	12/82–11/84
Staples and staplers from Sweden:	
Grytgols Bruks	12/83–11/84
J. Kihlberg	12/83–11/84
Barium carbonate from West Germany:	
Kali-Chemi	7/84–06/85
Drycleaning Machinery from West Germany:	
Boewe	11/82–10/84
Countervailing Duty Proceeding	
Pectin from Mexico	4/83–12/84

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)) and §§ 353.53a(c) and 353.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c); 50 FR 32556, August 13, 1985).

Dated: February 7, 1986.

Gilbert B. Kaplan,

Deputy Assistance Secretary, Import Administration.

[FR Doc. 86–3069 Filed 2–11–86; 8:45 am]

BILLING CODE 3510–DS–M

[C–535–001]

Cotton Shop Towels From Pakistan; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On September 30, 1985, the Department of Commerce published the initiation and preliminary results of its administrative review of the countervailing duty order on cotton shop towels from Pakistan. The review covers the period October 27, 1983, through March 31, 1984, and eight programs.

We gave interested parties an opportunity to comment on the preliminary results. After review of all the comments received, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Alan Long or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1985, in accordance with § 355.10(a) of the Commerce Regulations, the petitioner, Milliken &

Company, requested an administrative review of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974, March 9, 1984). On September 30, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 39744) the initiation and preliminary results of its administrative review of this order. The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Pakistani cotton shop towels. Such merchandise is currently classifiable under item 366.2740 of the Tariff Schedules of the United States Annotated.

The review covers the period October 27, 1983, through March 31, 1984, and eight programs: (1) A compensatory rebate; (2) an excise tax rebate; (3) a sales tax rebate; (4) a customs duty rebate; (5) income tax reductions; (6) export credit insurance; (7) an import duty rebate; and (8) export financing.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Government of Pakistan and the petitioner.

Comment 1: The Government of Pakistan requested that the Department delay publication of these final results and combine this administrative review with the next administrative review of this order. The Government of Pakistan retained counsel after the publication of the preliminary results of this administrative review and counsel contends that, because of the late date, he had been unable to participate meaningfully in this review.

Department's Position: We believe it is inappropriate in this case to combine the current administrative review with the next review. We began this review under our old regulations on April 24, 1984, and sent a questionnaire to the Pakistani government on that day. We received an inadequate reply. We reiterated our request on December 27, 1984, and received no reply. At the request of the Government of Pakistan, we extended the deadline for responding to the questionnaire a number of times and have provided ample time and opportunity for all interested parties to participate fully.

Comment 2: Counsel for the Government of Pakistan requested an extension of the comment period on the preliminary results of this review to permit him sufficient time to review the record and make substantive comments concerning the preliminary results.

Department's Position: Our consistent practice has been not to extend the 30-day comment period except to allow comments on issues arising from a hearing or otherwise arising after the preliminary results. We also occasionally allow brief extensions due to logistical difficulties, as was done in this case. The comment period for this review allowed sufficient time for interested parties to review the record and comment on the preliminary results.

Comment 3: The petitioner contends that the Department properly used the best information available to arrive at the results of this administrative review.

Department's Position: We agree. (*See* the preliminary results of this review (50 FR 39744, September 30, 1985).)

Final Results of Review

After reviewing all of the comments received, the final results of the review are the same as the preliminary results. We determine the net subsidy to be 18.09 percent for the period October 27, 1983, through March 31, 1984.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the net subsidy determined under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the net subsidy, and refunded to the extent that the estimated duty is higher than the net subsidy, for merchandise entered, or withdrawn from warehouse, for consumption before the publication of the notice of the final affirmative injury determination by the International Trade Commission, here February 29, 1984. Therefore, we will instruct the Customs Service to assess countervailing duties at the appropriate rates for all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 27, 1983, the date of the Department's preliminary affirmative determination, and on or before February 28, 1984. We will also instruct the Customs Service to assess countervailing duties of 18.09 percent of the f.o.b. invoice price on any shipments of cotton shop towels entered, or withdrawn from warehouse, for consumption on or after February 29, 1984, and exported on or before March 31, 1984.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, of 18.09 percent of the entered value on any shipment of Pakistani cotton shop towels entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: February 5, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-3071 Filed 2-11-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application, Announcements; Mississippi

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $200,000 for the project performance of 7/1/86 to 6/30/87. The MBDC will operate in the Jackson, MS Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $170,000 in Federal funds and a minimum of $30,000 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-86007-01 for the Jackson, MS SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MEDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MEDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MEDA supports MEDC programs that can: coordinate and broker public and private sector resources on behalf of minority

individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firms proposed approach to performing the work requirements included in the applications; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is 3/14/86.

Applications must be postmarked on or before 3/14/86.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, 404–347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Friday February 28, 1986, at 9:00 a.m.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: February 6, 1986.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 86–3057 Filed 2–11–86; 8:45 am]

BILLING CODE 3510–21–M

National Bureau of Standards

Voluntary Product Standard; Approval of Amendment to PS 20–70, "American Softwood Lumber Standard"

An amendment to Voluntary Product Standard PS 20–70, entitled, "American Softwood Lumber Standard" became effective on January 31, 1986. Copies of the amendment are available from the Office of Product Standards Policy, A625 Administration Bldg., National Bureau of Standards, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Donald R. Mackay, Associate Manager, Standards Management Program, National Bureau of Standards, Gaithersburg, Maryland 20899, telephone number (301) 921–3287.

Dated: February 6, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 86–2944 Filed 2–11–86; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Joseph A. Malatesta; Alaska

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal Dismissal.

On August 28, 1986, Joseph A. Malatesta (Appellant) appealed to the Secretary of Commerce (Secretary) under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended. The appeal was taken from an objection by the Alaska Division of Governmental Coordination (State) to Appellant's proposed 30-by-60 foot fish receiving dock in Ninilchik Harbor, Alaska. The dock would require a U.S. Army Corps of Engineers dredge and fill permits under the Clean Water Act and the Rivers and Harbors Act.

Ths State found that Appellant's project would be inconsistent with the federally-approved Alaska Coastal Management Program because a beach access road could be blocked by construction activities.

On October 2, 1985, the State informed Appellant that it would no longer object to the proposed dock if Appellant agreed not to block the access road. Appellant agreed to this condition.

Because the consistency objection no longer existed, the Secretary agreed to dismiss Appellant's appeal on January 30, 1986.

FOR FURTHER INFORMATION CONTACT: L. Pittman, Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC 20235; (202)254–7512.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: February 5, 1986.

James W. Brennan,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86–3025 Filed 2–11–86; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management; Federal Consistency Appeal by National Welders Supply Co.; North Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal Dismissal.

On May 21, 1985, National Welders Supply Company (National Welders) appealed to the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act, as amended, 16 USC 1456(c)(3)(A). The appeal was taken from an objection by the North Carolina Department of Natural Resources and Community Development (DNRCD) to National Welder's proposed welding supply store and industrial gas transfill plant requiring an Army Corps of Engineers permit to fill approximately 0.5 acres of wetland near the Cape Fear River, Wilmington, North Carolina. DNRCD objected to the project based on a conflict with the City of Wilmington's land use plan which classified the area as "Conservation" based on its natural values and location within the 100-year flood hazard area.

National Welders has now decided not to pursue its project and requested permission to withdraw its appeal on December 27, 1985. On January 30, 1986, the Secretary of Commerce granted National Welders' request, dismissing the appeal.

FOR ADDITIONAL INFORMATION CONTACT: L. Pittman, Attorney-Advisor, National Oceanic and Atmospheric Administration, Office of the Assistant General Counsel for Ocean Services, 2001 Wisconsin Avenue, NW., Washington, DC 20232; 202/254–7512.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: February 5, 1986.

James W. Brennan,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86–3026 Filed 2–11–86; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare an Environmental Impact Statement for the Over-the-Horizon Backscatter (OTH-B) Central Radar System

The Air Force intends to prepare an environmental impact statement on the proposal to construct and operate an over-the horizon backscatter radar in the central United States. The proposed locations for the transmit and receive sites are in the states of Minnesota, North Dakota and South Dakota. Locations under evaluation are: Dahlen, ND; Blanchard, ND; Galesburg, ND; Andover, SD; Thief River Falls, MN; and Wheaton, MN. The proposed location for the operations center is Grand Forks Air Force Base, ND.

The over-the-horizon radar will detect aircraft in a surveillance area from five hundred miles to eighteen hundred miles from radar. The radar will provide coverage and to the east, west and south. Detection and tracking information is needed to provide early warning of aircraft and cruise missile attack upon North America. The radar operates by refracting high frequency radio waves off the ionosphere to targets over the horizon. The reflected signal from the target returns over the same path. The east coast OTH-B system is under construction in Maine and two others are programmed for the west coast and Alaska.

The complete central radar system requires one transmit site, one receive site and one operations center. The antennas for this radar are fixed with the length of a single antenna measuring between 4,000 and 9,000 feet long. The transmit site requires a parcel of land of approximately 4,000 acres and the receive site requires a parcel of land of approximately 4,000 acres. The distance between the transmit and receive sites cannot be closer than 50 miles nor further apart than 150 miles. The system also requires buildings to support the operations and maintenance of the radar. New construction will include an operations center of approximately 14,000 square feet; transmit site support facilities of approximately 14,000 square feet for each antenna array; and receive site support facilities of approximately 6,000 square feet for each antenna array.

The Air Force plans to hold public scoping meetings in late February 1986. Announcement of the specific scoping meetings will be made through the local media by the 321 Strategic Missile Wing Public Affairs Office at Grand Forks Air Force Base, ND. Persons and organizations who wish to provide information on the proposed action, or express concerns which may be analyzed in the environmental impact statement, may contact the over-the-horizon backscatter (OTH-B) systems program office which is managing the development and deployment of the system for the Air Force.

Persons requiring more information on the proposed action and the environmental impact statement should contact: HQ Electronic Systems Division, OTH-B Systems Program Office, Attn: Colonel James A. Lee, Hanscom AFB, MA 01731, Phone: (617) 271-5387.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 86-3023 Filed 2-11-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following transfer: RTD/SW (EU)-135, for the retransfer of MTR-prototype silicide fuel elements containing a total of 100 kilograms of uranium enriched to 19.95 percent in the U-235 isotope, from Nukem, in Hanau, the Federal Republic of Germany, to Studsvik, Sweden for use as fuel in the Swedish R-2 reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 7, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-3111 Filed 2-11-86; 8:45 am]

BILLING CODE 6450-01-M

New Fuel Form Workshop; Meeting

The Office of Fossil Energy (OFE), U.S. Department of Energy, is sponsoring a New Fuel Form Workshop on February 25-27, 1986, which is open to the public. The workshop will be held in Room GE-086, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. The objectives of the workshop are: (1) To stimulate the renewed interest to enhance coal use in the energy supply, user, markets, and the technical community that supports these markets; (2) to identify critical front-end research needs that will provide a fresh look at the coal structure, chemistry and properties to generate coal-derived new fuel forms; (3) to foster and facilitate increased use of coal-derived fuel forms in conventional energy conversion machines; and (4) to create an environment where all parties involved in the energy technology development can exchange ideas to provide for a balanced spectrum. As this is a ground breaking workshop designed to stimulate discussion that will help us to evaluate the potential of further work in these areas and because it is a new thrust, OFE most likely is not aware of all efforts which would contribute. Consequently, audience participation will be encouraged during question and answer periods after individual presentations and interjected during panel sessions. Proceedings will be published including papers from individual presenters and synthesis of panel discussions and audience stimulated exchanges. To receive an agenda, contact Ms. Denise Swink, Office of Coal Utilization, Advanced Conversion and Gasification at 301/353-2798.

Dated: January 30, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-3080 Filed 2-11-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-08-NG]

Western Gas Marketing U.S.A. Ltd.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 24, 1986, of an application filed by Western Gas Marketing U.S.A. Ltd. (Western), a wholly-owned indirect subsidiary of TransCanada PipeLines Limited (TransCanada), for blanket authorization to import up to a total of 300 Bcf of natural gas over a two-year period beginning on the date of first delivery. Western would sell gas supplied by TransCanada's Alberta supply sources to U.S. purchasers in the spot and short-term market. The specific terms, including price and volume, for each import and sale would be negotiated on an individual basis. Western expects the sales to be made on both a firm and an interruptible basis. Western proposes to file quarterly reports describing the import transactions.

Western requests the ERA to modify the reporting requirement imposed on similar authorizations to allow individual transactions to be treated as confidential for a 90-day period to be consistent with the policy of the Canadian National Energy Board.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than March 14, 1986.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9590.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984).

Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., March 14, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an orgal presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Western's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 5, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2110 Filed 2-11-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-267-000, et al.]

Electric Rate and Corporate Regulation Filings; Connecticut Light and Power Co. et al.

February 4, 1986.

Take notice that the following filings have been made with the Commission:

1. Connecticut Light and Power Company

[Docket No. ER86-267-000]

Take notice that on January 30, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with Respect to Various Gas Turbine Units between CL&P and Montaup Electric Company (Montaup) dated as of November 1, 1985.

CL&P states that the Purchase Agreement provides for a sale to Montaup of a specified percentage of capacity and energy from various CL&P gas turbine units (the Units) during the

period November 1, 1985 through April 30, 1986.

CL&P requests that the Commission permit the rate schedule filed to become effective on November 1, 1985.

CL&P states that the capacity charge rate for the proposed service is a negotiated rate, based on the market price for this capacity, and less than the cost-of-service rate. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed and is determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/kW-month) and (ii) the number of kilowatts of winter capability which Montaup is entitled to receive during such month. The Energy Charge, Variable, and Additional Maintenance Charge are based on Montaup's portion of the applicable fuel expenses and hours of operation related to the Units and no special cost-of-service studies were made to derive these charges.

CL&P states that the services to be provided under the Purchase Agreement are the same services provided by CL&P and WMECO pursuant to purchase agreements with City of Chicopee Municipal Lighting Plant (FERC Rate Schedule Nos. CL&P 331, WMECO 267), and with the Village of Hyde Park Electric Department (FERC Rate Schedule No. WMECO 215).

CL&P states that a copy of the rate schedules have been mailed or delivered to CL&P, Hartford, Connecticut and to Montaup, Cambridge, Massachusetts.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket No. ER86-263-000]

Take notice that Duke Power Company (Duke) on January 28, 1986 tendered for filing a contract between Duke and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA), dated January 13, 1986. This contract supersedes the prior contract on file with the Commission and contains a proposed change in the amount of capacity and accompanying energy to be wheeled by Duke from the reservoir projects constructed by the Department of the Army in the Savannah River Basin, known as the Hartwell, Clarks Hill, and Richard B. Russell Projects, to certain preference customers of the United States Government located in Duke's service area in North Carolina and South Carolina. No change is being proposed in the current wheeling rate of $1.62 being charged under the present agreement.

Duke has requested that the contract become effective on the date of tender for filing or January 28, 1986, or as soon as the Commission deems appropriate. If waiver is not granted, however, Duke requests an effective date no later than sixty (60) days after the date of tender for filing or March 31, 1986.

Copies of the filing were served on the Southeastern Power Administration, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Power Company

[Docket No. ER86-255-000]

Take notice that American Electric Power Service Corporation (AEP) On January 23, 1986 tendered for filing on behalf of its affiliate Ohio Power Company (OPCO), which is an AEP affiliated operating subsidiary, Supplement No. 17 dated december 16, 1985 to the Operating Agreement dated January 1, 1952 between the Ohio Edison Company (Edison) and OPCO. The Commission has previously designated the 1952 Agreement as OPCO's Rate Schedule FERC No. 25 and Edison's Rate Schedule FERC No. 9.

Sections 1 through 5 of this Supplement increase the Parties' transmission demand rate for Emergency Energy to 2.75 mills/kWH, adds a transmission demand rate of 2.75 mills/kWH for Non-Displacement Energy transactions, and adds a 3.75 mills/kWH minimum to the Parties' provisions for the transmission of Economy Energy. Section 6 of this Supplement revises Edison's demand rate for Short Term Power from $0.85/kW-week to $1.25/kW-week. In addition, Sections 7 through 9 of this Supplement revise the Parties' Short Term Power Service Schedule by adding provisions for a rate of "up to" the Parties' respective demand and energy rates. Such reductions are, however, limited to 110% of the out-of-pocket cost associated with each specific reservation for Short Term Power and Energy. All of the rates proposed here, pertaining to OPCO, have previously been accepted for filing by the Federal Energy Regulatory Commission in various other filings between AEP affiliated operating subsidiaries and unaffiliated electric utility systems.

AEP has requested that the Commission permit this Supplement to become effective in two parts, allowing OPCO's 2.75 mills/kWH demand rate for the transmission of Non-Displacement Power and Energy to become effective as of October 8, 1985, and the remainder of this Supplement to become effective as of January 15, 1986. This request has been made so that OPCO could participate in multi-party opportunity sales to Edison that would not have otherwise been made.

Copies of this filing were served upon the Public Utilities Commission of Ohio.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement

[Docket No. ER86-266-000]

Public Service Electric and Gas Company
Philadelphia Electric Company
Pennsylvania Power & Light Company
Baltimore Gas and Electric Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Potomac Electric Power Company
Atlantic City Electric Company
Delmarva Power & Light Company

Take notice that on January 29, 1986, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection filed, on behalf of the above listed parties to the PJM Agreement, that Agreement consisting of the original agreement dated September 26, 1956, all supplemental agreements thereto and all schedules thereto currently in effect.

The purpose of this filing is to supersede the current rate schedule designations for the individual parties listed above with a single rate schedule designation for the PJM Agreement to become effective April 1, 1986. No changes in terms, rates or facilities are proposed in this filing.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3058 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2266-011, et al.]

Hydroelectric Applications, Nevada Irrigation District, et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Amendment of License.

b. Project No.: 2266-011.

c. Date Filed: July 25, 1985.

d. Applicant: Nevada Irrigation District.

e. Name of Project: Bowman Transmission Line.

f. Location: In Nevada and Sierra Counties, near Sierra City, California; within Tahoe National Forest.

g. Filed Purusant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Frederick G. Bandy, Manager, Nevada Irrigation District, P.O. Box 1019, Grass Valley, California 95945.

i. Comment Date: March 10, 1986.

j. Description of Project: Nevada Irrigation District was authorized to construct the 9-mile-long, 60-kV Bowman transmission line by an order amending its license for Project No. 2266. 31 FERC ¶ 62,238 (1985). This amendment relocates the Southern terminus of the Bowman transmission line to a switching point south of the Lake Spaulding along Pacific Gas and Electric Company's existing 60-kV transmission line. The total length of the proposed Bowman transmission line would be increased from 9 miles to 10 miles. All other project facilities and features of the project would remain the same as previously authorized.

k. Purpose of Project: The transmission line would transmit power from the Bowman Powerhouse, a part of FERC Project No. 2266, to PG&E's system. The cost of the project is estimated to be about $1,690,000.

l. This notice also consists of the following standard paragraphs: B and C.

m. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the National Environmental Policy Act, Pub. L. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license amendment. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

2a. Type of Application: Preliminary Permit.

b. Project No.: 9449-000.

c. Date Filed: September 11, 1985.

d. Applicant: Eugen Water and Electric Board.

e. Name of Project: Strube-Cougar.

f. Location: On the South Fork McKenzie River in Lane County, Oregon within the Willamette National Forest and located on U.S. land administered by the Corps of Engineers. T.16S., R.5E., Sections 19, 30, 31, and 32.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ms. Jean Reeder, Business Manager, Eugene Water & Electric Board, P.O. Box 10148, Eugene, Oregon 97440 and Mr. Erling T. Soli, Haner, Ross and Sporseen, Inc., 15 SE 82nd Drive, Gladestone, Oregon 97027 (505) 848-2411.

i. Comment Date: March 10, 1986.

j. Competing Application: Project No. 9055, Date Filed: March 27, 1985.

k. Description of Project: The proposed project would consist of two developments. The Cougar Development would consist of installing a new 35 MW generating unit in the Corps existing Cougar powerhouse, producing an estimated average annual energy output of 176,900 MWh. The Strube Lake Development would consist of: (1) An 80-foot-high, earth and gravel-fill dam having a concrete gravity gate controlled chute spillway, located 1.7 miles downstream from the existing Cougar Dam, creating; (2) a reservoir with a usuable storage capacity of 3,000 acre-feet and a surface area of 300 acres at a normal surface elevation of 1,236 feet; (3) a powerhouse at the dam containing a single unit with an installed capacity of 4,500 kW, producing an estimated average annual energy output of 21,300 MWh; (4) a tailrace discharging project flows into McKenzie River; and (5) a 0.9-mile-long, 12.5-kV transmission line extending to the Blue River Substation.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost of conducting these studies is $89,500.

l. Purpose of Project: Project power would be used by the Applicant.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

3a. Type of Application: Preliminary Permit.

b. Project No.: 9539-000.

c. Date Filed: October 9, 1985.

d. Applicant: Trafalgar Power Inc.

e. Name of Project: Herkimer Project.

f. Location: West Canada Creek in Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Streets, Franklin, NH 03035, (603) 934-4202.

i. Comment Date: March 21, 1986.

j. Competing Application: Project No. 9254, Date Filed: May 31, 1985.

k. Description of Project: The proposed project would consist of (1) An existing timber crib dam consisting of: (a) a 9-foot-high, 160-foot-long section with a crest elevation of 420.0 feet m.s.l.; and (b) a 12-foot-high, 130-foot-long section with a crest elevation of 419.2 feet m.s.l.; (2) a reservoir with a surface area of 19 acres, a storage capacity of 125 acre-feet, and a normal water surface elevation of 420.5 feet m.s.l. with; (3) a timber flashboards; (4) an existing intake structure; (5) a new reinforced concrete and steel powerhouse containing one generating unit with a capacity of 200 kW and two generating units with a capacity of 589 kW each for a total installed capacity of

1,378 kW; (6) a new transmission line, 50 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 5,695,000 kWh. The existing dam is owned by the Pennsylvania Egg Carton Company, Herkimer, New York.

l. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

4a. Type of Application: Preliminary Permit.

b. Project No.: 9395–000.

c. Date Filed: August 6, 1985.

d. Applicant: Smitchie Hydroelectric Company, Inc.

e. Name of Project: Lake Solitude Dam.

f. Location: Raritan River in Hunterdon County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Allan Ritchie, 60 Broad Street, Seventh Floor, New York, NY 10004.

i. Comment Date: March 17, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 42-foot-high, 500-foot-long dam owned by A.R. Casella at water surface elevation 301 feet; (2) an existing reservoir with a surface area of 32 acres and a gross storage capacity of 540 acre-feet; (3) an existing 6-foot-diameter, 700 foot-long penstock; (4) an existing powerhouse that will contain a generating unit with a rated capacity of 400 kW; and (5) a proposed 0.5-mile-long transmission line tying into the existing New Jersey Central Power and Light Company system. The Applicant estimates a 2,500,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks a preliminary permit to prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9378–000.

c. Date Filed: August 1, 1985.

d. Applicant: Yuba County Water Agency.

e. Name of Project: Wambo Bar Water Power Project.

f. Location: On North Fork Yuba River and tributaries, including Slate, Canyon, Cherokee and Indian Creeks partially within the Plumas and Tahoe National Forests in Yuba, Butte and Sierra Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur W. Aseltine, Administrator, Yuba County Water Agency, P.O. Box 1569, Marysville, CA 95901.

i. Comment Date: March 24, 1986.

j. Description of Project: The proposed project would consist of: (1) A 300-foot-high, 900-foot-long dam at elevation 2,265 feet; (2) a reservoir with a usable storage capacity of 70,000 acre-feet; (3) a 25-foot-diameter, 1,400-foot-long tunnel/penstock; (4) a powerhouse containing generating units with a combined rated capacity of 79 MW to operate under a head of 275 feet; and (5) a 4-mile-long, 115-kV transmission line will connect the project with an existing Pacific Gas and Electric Company's (PG&E) line northwest of the powerhouse.

k. Purpose of Project: The project's estimated 191 million kWh of annual generation will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6a. Type of Application: License (Minor).

b. Project No.: 6947–001.

c. Date Filed: November 30, 1984.

d. Applicant: F. & T. Services Corporation.

e. Name of Project: Lake Claiborne Dam.

f. Location: Bayou D'Arbonne, Claiborne Parish, Louisiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. V. A. Forte, President, F.&T. Services Corporation, P.O. Box 64844, Baton Rouge, LA 70896.

i. Comment Date: March 17, 1986.

j. Description of Project: The proposed would consist of: (1) The existing Lake Claiborne Dam owned by the State of Louisiana, an approximately 5,500-foot-long, 24-foot-high earthfill structure; (2) an existing reservoir approximately 6,400 acres in surface area and having a storage capacity of approximately 99,500 acre-feet at the normal pool elevation of 185 feet (m.s.l.); (3) a proposed siphon intake structure; (4) a proposed penstock, 6 feet in diameter and approximately 250 feet long; (5) a proposed powerhouse containing a single 600-kW generating unit; (6) a proposed tailrace channel, approximately 20 feet wide and 150 feet long; (7) a proposed 200-foot-long 29-kV transmission line; and (8) appurtenant facilities.

k. Purpose of Project: The estimated average annual generation of 1,750,000 kWh would be sold to Claiborne Electric through Cajun Electric Cooperative.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

7a. Type of Application: Minor License.

b. Project No.: 9185–000.

c. Date Filed: May 10, 1985 and supplemented September 19, 1985.

d. Applicant: Northwestern Wisconsin Electric Company.

e. Name of Project: Clam River Dam Hydroelectric.

f. Location: On the Clam River near Union, Burnett County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Glen R. Tamke, Owen Ayres & Associates, Inc., Eau Claire, WI 54701.

i. Comment Date: March 14, 1986.

j. Description of Project: The project consists of: (1) A dam with a total length of 54 feet and height of 10 feet; (2) a reservoir with a storage capacity of 3,825 acre/feet at maximum pool level of 898.95 feet, m.s.l., (3) adjacent to the spillway is a powerhouse, approximately 48 feet long by 28.1 feet wide, housing two generating units at 500 kW each, and one generating units at 400 kW, For a total installed capacity of 1400 kW; (4) an earth dike 898-feet-long located to the left of the spillway dam and an earth dike 223-feet-long located to the right of the powerhouse; (5) approximately 100-foot-long 34.5-kV transmission line; and (6) appurtenant facilities. The owner and operator of the project facilities is the Northwestern Wisconsin Electric Co. The Applicant estimates an average annual energy generation Tof 4,768,250 kWh.

k. Purpose of Project: Applicant anticipates that project energy will be sold to customers within its utility system.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

8a. Type of Application: Preliminary Permit.

b. Project No.: 9426–000.

c. Date Filed: September 4, 1985.

d. Applicant: Marcal Mills Hydro Partners #1.

e. Name of Project: Welchville.

f. Location: Little Androscoggin River, Oxford County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, NW., Suite 600, Washington, DC 20005 Phone (202) 783–2100.

i. Comment Date: March 14, 1986.

j. Description of Project: The project consists of: (1) An existing 11-foot-high, 180-foot-long timber-crib gravity dam; (2) an existing reservoir 385 acres in area with a storage capacity of 380 acre-feet at a normal maximum surface elevation of 302 feet mean sea level; (3) a proposed steel penstock 4 feet in diameter and 25 feet in length; (4) a proposed concrete powerhouse, 25 feet in length and 20 feet in width, housing one turbine/generator with a capacity of 275 kW; (5) a proposed concrete tailrace 20 feet in length, 5 feet in width and 5 feet in depth; (6) a proposed 12.5 kV transmission line 10 feet in length; and (7) appurtenant facilities. The estimated annual energy production of the project is 1,000,000 kWh. The estimated net hydraulic head is 10 feet. Project power would be sold to Central Maine Power Company. The owner of the dam is The Marcal Paper Mills, Inc.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $145,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9a. Type of Application: Preliminary Permit.

b. Project No.: 9511–000.

c. Date Filed: October 1, 1985.

d. Applicant: C&O Hydro Associates.

e. Name of Project: Georgetown Hydropower

f. Location: On the Chesapeake and Ohio Canal and Potomac River in Washington, DC.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David M. Coombe, 410 Severn Avenue, Suite 409, Annapolis, MD 21403.

i. Comment Date: March 13, 1986.

j. Description of Project: The proposed project would consist of: (1) Two existing square intakes and two metal headgates; (2) an existing 10-foot-diameter penstock 40 feet long; (3) an existing concrete powerhouse to contain one turbine/generator with an installed capacity of 700 kW; (4) a proposed tailrace approximately 12 feet in diameter and 140 feet long; (5) a new 13.2-kV transmission line approximately 50 feet long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 3.8 GWh operating under an hydraulic head of 36 feet. The proposed project is owned by Wilking-Rogers Corporation.

k. Purpose of Project: Project power will be sold to the Potomac Electric Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope and Cost of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

10a. Type of Application: Minor License.

b. Project No.: 8284–001.

c. Dated Filed: June 10, 1985.

d. Applicant: Geoffrey Shadroui.

e. Name of Project: Stevens No. 1.

f. Location: On the Stevens Branch of the Winooski River near Barre, in Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Geoffrey Shadroui, 121 Maple Avenue, Barre, VT 05641.

i. Comment date: March 12, 1986.

j. Description of Project: The project would consist of: (1) An existing dam with an overall length of 81 feet and a height of 7 feet; (2) an existing 0.24-acre reservoir with a storage capacity of .7 acre-feet at the normal water surface elevation of 658.0 feet M.S.L.; (3) the proposed installation of three-foot-high flashboards which will increase the surface area of the reservoir to 0.26 acres at the normal maximum surface elevation of 661 feet msl; (4) a proposed powerhouse to contain an installed generating capacity of 35 kW; (5) a proposed 300-foot-long, 480V transmission line; (6) an existing 1,700-foot-long, 12-foot-wide, dirt access road; (7) a proposed 200-foot-long extension of the 12-foot-wide, access road; and (8) appurtenant facilities. The existing dam is owned by the City of Barre, Vermont. The Applicant estimates that the average annual energy generation will be 120 MWh. The Applicant anticipates that the power produced will be sold to the Vermont Power Exchange.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11a. Type of Application: Preliminary Permit.

b. Project No.: P–9661–000.

c. Dated Filed: December 3, 1985.

d. Applicant: Auburn Naturalists, LTD.

e. Name of Project: Littlefield Corner.

f. Location: On the Little Androscoggin River in Androscoggin County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, Suite 600, Washington, D.C. 20005.

i. Comment date: March 17, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 28-foot-high and 420-foot-long concrete dam with a spillway elevation of 211 feet NGVD; (2) an existing 101-acre surface area reservoir with a storage capacity of 750 acre-feet with a maximum surface elevation of 211 feet NGVD; (3) an existing 96-inch-diameter penstock extending 150 feet in length; (4) an existing powerhouse to contain one turbine/generator for an installed capacity of 900 kW; (5) an existing 50-foot-wide, 8-foot-deep and 120-foot-long tailrace; (6) a proposed 1320-foot-long, 12.5-kV transmission line: and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 5 GWh under a hydraulic head of 21 feet. The dam is owned by the City of Auburn.

k. Purpose of Project: Project power will be sold to Central Maine Power.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $145,000.

12a. Type of Application: Preliminary Permit.

b. Project No.: 9520–000.

c. Date Filed: October 3, 1985.

d. Applicant: Rocky Mountain Hydro, Inc.

e. Name of Project: Wind River.

f. Location: On the Bureau of Reclamation's Wyoming Canal on the Wind River near the town of Morton, Fremont County, Wymoning.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael L. Raisch, President, Rocky Mountain Hydro, Inc., 4065 South Roslyn Street, Denver, CO 80237.

i. Comment Date: March 17, 1986.

j. Description of Project: The proposed project would consist of: (1) An intake gate on the existing Wymoning Canal; (2) a 1,000–foot–long penstock; (3) a powerhouse containing two generating units with a total rated capacity of 3,700 kW; and (4) a connection to an existing 115–kV transmission line adjacent to the proposed powerhouse. Applicant estimates the average annual energy production to be 12 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $50,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the local power company.

l. This notice also consist of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13.a. Type of Application: Preliminary Permit.

b. Project No.: 9497–000.

c. Date Filed: October 1, 1985.

d. Applicant: Great Western Power and Light, Inc.

e. Name of Project: Missippi River L & D No. 25.

f. Location: On the Mississippi River in Lincoln County, Missouri and Calhoun County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham or Mr. Jordan Walker, 484 East 300 North, Manti, UT 84642.

i. Comment Date: March 17, 1986.

j. Description of Project: The Applicant would utilize an existing dam and lands administered by the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed powerhouse containing two generating units with a total installed capacity of 36 MW; (2) a proposed inlet channel; (3) a proposed tailrace; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated averaged annual gereration is 175,000,000 kWh.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $85,000.

l. Purpose of Project: Power produced at the project would be sold to the Missouri Edison Company or other local utilities.

m. This notice also consist of the following standard paragraphs: A5, A7, A9, B, C, & D2.

14a. Type of Application: Preliminary Permit.

b. Project No.: 9481–000.

c. Date Filed: September 25, 1985.

d. Applicant: New Found Development.

e. Name of Project: Wilson Pond Dam/G.H. Bass & Company.

f. Location: Wilson Stream, Franklin County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jeffery A. Marlowe, 3 Spring Street, Newport, RI 02840; Phone: (401) 846–1426.

i. Comment Date: March 18, 1986.

j. Description of Project: The proposed project would consist of:

(1) An existing earthfill and masonry gravity dam 78 feet in length and 24 feet in height, including a 55 foot long masonry spillway and a 23 foot long concrete intake structure;

(2) An existing 275 foot long power canal, 15 to 30 feet wide, providing flow to a 4 foot diameter, 25 foot long steel penstock;

(3) An existing impoundment of 570 acres surface area and a capacity of 6,610 acre-feet at a normal maximum surface elevation of 570 feet mean sea level;

(4) An existing 100 kW turbine/generator housed in an existing sub-basement to the G.H. Bass & Company Shoe Factory facility;

(5) The proposed refurbishment of the existing generation and control equipment;

(6) A proposed 10 foot long, 230 volt-transmission line, and

(7) Appurtenant facilities.

The estimated annual energy production is 350,000 kWh. Project power would be consumed on site and surplus power sold to Central Maine Power Company. All existing facilities are owned by G.H. Bass & Company, Inc., Wilton, Maine, and Foster's Manufacturing Company, Inc., Wilton, Maine.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $14,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

15a. Type of Application: Preliminary Permit.

b. Project No.: 9660–000.

c. Data Filed: December 3, 1985.

d. Applicant of Project: St. Maries Naturalists, Ltd.

e. Name of Project: St. Maries River.

f. Location: On the St. Maries River in the Panhandle National Forest near St. Maries, Benwah County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Esquire, 1350 New York Avenue, #600, Washington, DC 20005.

i. Comment Date: March 21, 1986.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 2,435 feet; (2) a 2,315-foot-long, 102-inch-

diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 3,400 kW; and (4) a 4.5-mile-long transmission line. Applicant estimates the average annual energy production to be 14.9 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $145,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Washington Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 7477–000.

c. Date Filed: October 11, 1985.

d. Applicant: Burt Dam Associates.

e. Name of Project: Burt Dam Project.

f. Location: On the Eighteenmile Creek in Niagara County, New York.

g. Filed Pursuant to: Energy Security Act of 1980, section 408, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Jeffrey W. Moon, President, J. W. Corporation, 334 Black Lane, Wetherfield, CT 06109.

i. Comment Date: March 17, 1986.

j. Description of Project: The application was initially filed on August 1, 1983, and materially amended on October 11, 1985, as shown below. The proposed project would consist of: (1) The 328-foot-long and 56-foot-high Burt Dam; (2) a reservoir with storage capacity of 2,447 acre-feet; (3) existing intake structures; (4) an existing powerhouse at the downstream face of the east abutment, with a new 300-kW turbine-generator; (5) a new 200-foot-long transmission line; and (6) other appurtenances. Applicant executed an option to lease project facilities from the Olcott Harbor Board of Trade. It is estimated that the project would produce an average annual generation of 2,223,633 kWh.

k. Purpose of Project: Project energy would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority to control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 9719–000.

c. Date Filed: December 24, 1985.

d. Applicant: F & T Services Corporation.

e. Name of Project: Mississippi River Lock & Dam No. 25.

f. Location: On the Mississippi River in Lincoln County, Missouri and Calhoun County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70986, 504–927–9321.

i. Comment Date: March 17, 1986.

j. Competing Application: Project No. 9497 Date Filed: October 1, 1985. Due Date: March 17, 1986.

k. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed powerhouse containing 4 generating units having a total rated capacity of 42 MW: (2) a proposed 150-foot-wide by 200-foot-long inlet channel; (3) a proposed 150-foot-wide by 350-foot-long outlet channel; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 175,000,000 kWh. Energy produced at the project would be sold to the Missouri Edison Company.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.

m. Purpose of Project: Power produced at the project would be sold to the Missouri Edison Company or other local utilities.

n. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 9468–000.

c. Date Filed: September 19, 1985.

d. Applicant: Clearwater Hydro.

e. Name of Project: Willow Creek Hydroelectric.

f. Location: On Willow Creek at the Bureau, of Reclamation-administered Ririe Dam in Bonneville County, Idaho Sections 15, 16, 21, and 22, Township 3 North, Range 40 East.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Richard R. Gresham, P.O. Box 158, Clearwater Hydro, Clipper Mills, CA 95930, (916) 675–2855.

i. Comment Date: March 17, 1986.

j. Competing Application: Project No. 9348–000, Date Filed: July 11, 1985.

k. Description of Project: The proposed project would utilize the existing dam and reservoir and would consist of: (1) Placement of a steel lining in the existing outlet tunnel; (2) a 40-foot-long, 8-foot-diameter penstock; (3) a 50-foot-square concrete powerhouse at the base of the outlet tunnel containing one or two generating units with a total rated capaicty of 2.5 MW, producing an average annual output of 9.2 GWh; and (4) a 5-mile-long, 69-kV transmission line connecting to an existing Utah Power and Light Company line.

A preliminary permit does not authorize construction. Applicant seeks a preliminary permit to conduct engineering, economic, and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities in $35,000.

l. Purpose of Project: The power produced by the project would be sold to Utah Power and Light Company.

m. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

19a. Type of Application: Preliminary Permit.

b. Project No.: 9605–000.

c. Dated Filed: November 1, 1985.

d. Applicant: Kittitas Reclamation District.

e. Name of Project: Kittitas Main Canal Station 1146.

f. Location: At Main Canal Station 1146, in Kittitas County, Washington Township 19N Range 16E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lemoyne C. Henderson, Manager, Kittitas Reclamation District, P.O. Box 276, Ellensburg, WA 98926, (509) 925–6158.

i. Comment Date: March 21, 1986.

j. Competing Application: Project No. 8332, Date Filed: June 1, 1984.

k. Description of Project: The proposed project would consist of: (1)

An intake structure built alongside the existing wasteway control gate; (2) a 48-inch-diameter penstock run parallel to the wasteway; (3) a powerhouse at elevation 1785 feet containing two generating units with a combined capacity of 3,600 kW and an average annual generation of 7 GWh; and (4) a 70-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $65,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A8, B, C, D2.

20a. Type of Application: Preliminary Permit.

b. Project No: 9575–000.

c. Date Filed: November 1, 1985.

d. Applicant: Rosebud Creek associates.

e. Name of Project: Rosebud Greek.

f. Location: In Custer National Forest on Rosebud Creek in Carbon County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: March 17, 1986.

j. Competing Application: Project No. 9594, Date Filed November 1, 1985.

k. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion dam at elevation 6205 feet; (2) a 13,000-foot-long, 42-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 8000 kW and an average annual generation of 25 GWh; and (4) a 7-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $85,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

21a. Type of Application: Preliminary Permit.

b. Project No.: 9569–000.

c. Date Filed: November 1, 1985.

d. Applicant: Lower Slate Creek Associates.

e. Name of Project: Lower Slate Creek.

f. Location: In Nezperce National Forest on Slate Creek in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: March 21, 1986.

j. Competing Application: Project No. 9596, Date Filed: November 1, 1985.

k. Description of Project: The proposed project would consist of: (1) A 2-foot-high diversion dam at elevation 2030 feet; (2) an 18,000-foot-long, 54-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 3,824 kW and an average annual generation of 15,546 GWh; and (4) a 2-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $12,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application on later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the application(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

c. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are equested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsiblitities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issueance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's respresentatives.

Dated: February 6, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc.86–3060 Filed 2–11–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP86–270–000 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

February 5, 1986.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86–270–000]

Take notice that on January 15, 1986, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–270–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation, on an interruptible basis, of up to 15,000 dt equivalent of gas per day for Northern Intrastate Pipeline Company (NIPCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, up to 15,000 dt equivalent of natural gas per day which NIPCO would cause its seller, Huffco Petroleum Corporation, to tender to Applicant in South Marsh Island area Block 260, offshore Louisiana. Applicant would perform such transportation service for NIPCO pursuant to a transportation agreement dated October 7, 1985. It is asserted that Applicant would transport the gas and deliver such quantities for NIPCO's account to Columbia Gulf Transmission Company at the Pecan Island Plant located in Vermilion Parish, Louisiana. Applicant proposes to charge NIPCO 23.2 cents per dt of gas transported, a rate derived from rate schedules X–118 and X–119 on file in the Applicant's FERC Gas Tariff, Original Volume No. 2. Applicant proposes to provide the requested transportation service for an initial term ending October 31, 1986, and such

additional term as the parties would determine.

Comment date: February 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-279-000]

Take notice that on January 21, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-279-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to increase the currently authorized firm entitlement sold to Metropolitan Utilities District (MUD) by Mcf per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is explained that a residential subdivision known as Stony Brook, located in Douglas County, Nebraska, was annexed in 1984 by the City of Omaha, Nebraska. Northern states that Peoples Natural Gas Company, Division of InterNorth, Inc. (PNG), the local distribution company serving Stony Brook at the time of the annexation, has agreed to sell the natural gas distribution properties it currently uses to serve the Stony Brook addition to MUD, the local distribution company serving Omaha, Nebraska.

Northern explains that subsequently, Utilicorp United Inc. (Utilicorp) has purchased all of the assets and assumed all of PNG's obligations which was certificated by the Commission on December 19, 1985, in Docket No. CP86-192-000. Northern states that such certificate already reflected a reduction in PNG's firm entitlement equivalent to the 750 Mcf of gas per day of firm entitlement associated with serving Stony Brook.

Consequently, Northern herein seeks authorization to increase the firm entitlement of MUD by 750 Mcf of gas as a result of the transfer of these properties. Northern states that the authorized level of firm entitlement would be unchanged as a result of the proposal described herein.

Comment date: February 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP86-278-000]

Take notice that on January 21, 1986, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86-278-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon four compressors in the Hugoton area, Stevens County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to abandon by relocation, four compressors located in Stevens County, Kansas:

(1) *Breech low compressor station*—One 2673 horsepower Cooper Bessemer 8V275 compressor unit;

(2) *Panoma low compressor station*—One 2673 horsepower Cooper Bessemer 8V275 compressor unit;

(3) *Moscow compressor station*—One 2673 horsepower Cooper Bessemer 8V275 compressor unit;

(4) *Hugoton compressor station*—One 3523 horsepower Cooper Bessemer 10V275 compressor unit.

Applicant avers that it has experienced a stabilization of production rates from the gas reservoirs in the Hugoton field similar to other pipelines in the area. It is explained that a consequence of the stabilization of production rates is that compression previously installed to meet declining reservoir pressures would not be required in the near term. Applicant asserts that the present and anticipated operation of the Hugoton field precludes the need for specific compression facilities at the Breech, Panoma, Moscow and Hugoton stations. Applicant furthers asserts that the proposed abandonment would not adversely affect its ability to supply contractual volumes.

Applicant proposes to relocate the four compressors to its Louisburg compressor station to replace obsolete units with the relocated units which have substantially equivalent design capacity. It is asserted that there would be no change in the daily design nor peak day design capacity at Louisburg as a result of the proposed replacement.

Comment date: February 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3089 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Ordered Granting Requests for Waivers

Issued: February 6, 1986.

Before Commissioners: A. G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C. M. Naeve.

Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company, a Division of Tenneco Inc., have filed a request for a waiver of the transitional provisions of Order No. 436 [1] as they apply to a transportation transaction performed under former § 284.221 of the Commission's Regulations. We will grant Columbia's

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985.

and Tennessee's request, as discussed below.

On June 12, 1985, Columbia and Tennessee entered into an agreement whereby Tennessee agreed to transport gas for Columbia pursuant to former § 284.221 of the Commission's Regulations under authorization issued on February 21, 1980, in Docket No. CP80-132, 10 FERC ¶ 61,166.

In reliance on this transportation agreement, Columbia began to install pads, compressors, and related equipment on its lines in Mayville, New York, and Union City, Pennsylvania. By the end of September 1985, approximately $1,644,000 had been spent in Mayville with more construction necessary. All construction was completed in Union City by October 9, at an approximate cost of $365,000. Because of the construction schedule, transportation did not commence prior to October 9.

In *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,386 (December 17, 1985, we established an economic substance test for grant of a waiver from the restrictions in the transitional provisions of Order No. 436. We stated that a "purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, or expended substantial funds prior to October 9." Columbia has spent significant funds and constructed substantial facilities before October 9 in reliance on a transportation contract.

Judel also stated that the economic substance test would not apply to a transporter because the "transporter has the option of utilizing the tranportation authority of Order No. 436." We applied that principle in *Exxon Gas System, Inc.*, 34 FERC ¶ 61,032 (January 21, 1986), where we held that a transporter did not meet the critiera of the economic substance test because the transporter has the power to "ameliorate its own economic detriment."

The case before us today, however, presents a different situation. Although Columbia is a pipeline, it is not the pipeline seeking transition treatment. Here, it is functioning in the role of shipper and purchaser, and not as a transporter. It is Tennessee's refusal to transport that prevents Columbia from obtaining supples for which it has contracted. For these reasons, we find that Columbia cannot improve its economic situation by transporting under Order No. 436 because it is dependent on the decisions of another participant to the transportation agreement. Thus, Columbia falls within the rationale of *Judel*. Accordingly, we will waive the restrictions in § 284.105 to the extent necessary to permit Tennessee's transportation transaction to commence.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3090 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM85-1-000 and Docket No. SA86-7-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Lone Star Gas Company, a Division of ENSERCH Corporation and Lone Star Gas Company, A Division of ENSERCH Corporation; Order Denying Request for Waiver

Issued February 6, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 23, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation, filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Subpart K of Part 385 of the Commission's Rules of Practice and Procedure. Although not so characterized by Lone Star, the petition in essence requests waiver of the restrictions in the transitional provisions of Order No. 436,[1] and has been treated as such. For the reasons stated below, we will deny Lone Star's petition.

Lone Star states that "it has operational problems in providing adequate service during peak periods" in Northern Texas which has resulted in gas shortages for several residential customers. Lone Star further states that it has an adequate gas supply in East Texas which is difficult to deliver to North Texas. At the same time, Lone Star claims that United Gas Pipe Line Company has "experienced severe capacity problems in its East Texas system during non-peak periods." Due to these circumstances, Lone Star and United entered into an exchange agreement on August 23, 1985, whereby Lone Star agreed to deliver gas to United in East Texas and United agreed to deliver gas to Lone Star in North Texas under section 311 of the NGPA.[2]

In reliance on the exchange agreement, Lone Star states that it spend $20,000 to construct facilities. Since the facilities were not completed by October 9, 1985, the exchange service did not commence before the effective date of Order No. 436.[3]

In *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,386 (December 17, 1985), we established a test for granting a waiver from the restictions in the transitional provisions of Order No. 436 based on whether a particular transaction had genuine economic substance prior to October 9, 1985. We stated that a "purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, expended substantial funds prior to October 9." This test is meant to grant relief from the transitional provisions of Order No. 436 without defeating its objectives.

The economic substance test will not be satisfied if the facilities were constructed or the funds expended by the transporter. A transporter, unlike a purchaser, seller, or end user, has the option of performing the transportation itself pursuant to the authority of the regulations adopted in Order No. 436, and thus has the power to ameliorate its own economic detriment. *See Exxon Gas System, Inc.*, 34 FERC ¶ 61,032 (January 21, 1985). Therefore, to the extent it is a transporter, Lone Star does not meet the criteria of the economic substance test established in *Judel*. However, the Commission recognizes that the transportation by Lone Star represents half of a transportation exchange. Lone Star can take steps toward ameliorating its own economic detriment by seeking authorization under Part 284 of our regulations as revised by Order No. 436.[4] (Accordingly, Lone Star also has the power to take steps to prevent its customers' loss of service.) It nevertheless still depends on another entity (United) to complete the exchange. Absent some contractual obligation, United's actions are beyond Lone Star's control. Accordingly, if Lone Star is in a position to implement its half of the exchange under any authorization available to it, thereby doing everything within its power to ameliorate its own economic detriment, the Commission will entertain a request for waiver of the transitional provisions of Order No. 436 with respect to United. In such situation, Lone Star would be in the same position as companies like Judel Glassware which had relied to their economic

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[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[2] Lone Star has intrastate and interstate facilities. The petition applies to its intrastate facilities.

[3] Lone Star's petition contains no information about whether United intends to transport gas under the provisions of Order No. 436.

[4] The Commission notes that an intrastate pipeline also has the option of seeking a "limited jurisdiction certificate." *See* Order No. 436-A, issued December 12, 1985, *mimeo.* at pp. 57-58.

detriment on agreements, without the power to ameliorate that detriment.

For the reasons stated above, we will not waive the restrictions in § 284.125.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3091 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM85-1-000 and RM85-1-146]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Natural Gas Pipeline Company of America; Order Granting Rehearing for Further Consideration

Issued: February 6, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 10, 1986, and January 16, 1986, Delhi Gas Pipeline Corporation and Natural Gas Pipeline Company of America, respectively, filed applications for rehearing of the order issued by the Commission on December 17, 1985, in Docket No. RM85-1-000, 33 FERC ¶ 61,401.

Rehearing of the "Order Granting and Denying in Part, Request for Clarification" issued on December 17, 1985, in Docket No. RM85-1-000 is granted solely for the purpose of affording the Commission additional time to consider the request for rehearing. Pursuant to Rule 713(b) of the Commission's Procedural Rules, no answer to this order, or to the requests for rehearing, will be entertained.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3059 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8843-002, et al.]

Surrender of Preliminary Permits; Lawrence J. McMurtrey et al.

February 6, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Lawrence J. McMurtrey

[Project No. 8843-002]

Take notice that Lawrence J. McMurtrey, Permittee for the Foss River Project No. 8843, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8843 was issued May 28, 1985, and would have expired October 31, 1986. The project would have been located on the Foss River in King County, Washington.

The Permittee filed the request on December 27, 1985.

2. Amador County

[Project No. 8487-001]

Take notice that Amador County, Permittee for the proposed Irish Hill Water and Power Project No. 8487, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 7, 1985, and would have expired on September 30, 1988. The project would have been located on Dry Creek in Amador County, California. The Permittee states taht a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on January 15, 1985.

3. Lawrence J. McMurtrey

[Project No. 8842-001]

Take notice that Lawrence J. McMurtrey, Permittee for the Jim Creek Project No. 8842, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8842 was issued May 31, 1985, and would have expired October 31, 1986. The project would have been located on Jim Creek in Snohomish County, Washington.

The Permittee filed the request on December 27, 1985.

4. Pleasant Hill Hydro Associates

[Project No. 8270-001]

Take notice that Pleasant Hill Hydro Associates, Permittee for the proposed Pleasant Hill Project No. 8270, requested by letter dated December 23, 1985, that its preliminary permit be terminated. The preliminary permit was issued on November 1, 1984, and would have expired on April 30, 1986. The project would be located on the Clear Fork of the Mohican River in Ashland County, Ohio.

The Permittee filed the request on December 30, 1985.

5. R.G. Associates

[Project No. 8677-001]

Take notice that R.G. Associates, Permittees for the Aloma I Project No. 8677, have requested that their preliminary permit be terminated. The preliminary permit for the Project No. 8677 was issued on June 20, 1985, and would have expired on November 30, 1986. The project would have been located at Conconully Dam in Okanogan County, Washington.

The Permittees filed the request on December 5, 1985.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3092 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-403-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; WV Hydro Corp., et al.

February 6, 1986.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. WV Hydro Corp.

[Docket No. QF86-403-000]

On January 17, 1986, WV Hydro Corp. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.5 megawatt hydroelectric facility (FERC P. 9673) is located on the Elk River, in Franklin County, Tennessee.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. The City of Broken Bow, Oklahoma

[Docket No. QF86-408-000]

On January 17, 1986, The City of Broken Bow, Oklahoma (Applicant), of P.O. Box 909, Broken Bow, Oklahoma 74728 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4 megawatt hydroelectric facility (FERC P. 3657) is located on Little River, in McCurtain County, Oklahoma.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Energy Growth Group, Inc.

[Docket No. QF86-485-000]

On January 8, 1986, Energy Growth Group, Inc. (Applicant), of 580 Fifth Avenue, New York, New York 10036 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 11.6 megawatt hydroelectric facility (FERC P. 6896) will be located on the Butte Creek, near Paradise, in Butte County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. The Town of Gassaway, West Virginia

[Docket No. QF86-407-000]

On January 17, 1986, The Town of Gassaway, West Virginia (Applicant), of Town Hall, Gassaway, West Virginia 26624 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 8 megawatt hydroelectric facility (FERC P. 3344) is located on the Elk River, in Braxton County, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. The City of Marion, Kentucky and Smithland Hydroelectric Partnership

[Docket No. QF86-412-000]

On January 17, 1986, the City of Marion, Kentucky and Smithland Hydroelectric Partnership (Applicant), of 108 East Belleville Street, Marion, Kentucky 42064 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 80 megawatt hydroelectric facility (FERC P. 6641) is located on the Ohio River, in Livingston County, Kentucky.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

6. Noah Corp., Aiken S.C. (Opekiska Dam Hydroelectric Development)

[Docket No. QF86-406-000]

On January 17, 1986, Noah Corp., Aiken, S.C. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10 megawatt hydroelectric facility (FERC P. 8990) is located on the Monongahela River, in Monongalia County, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

7. Noah Corp., Aiken, S.C. (Tygart Dam Hydroelectric Development)

[Docket No. QF86-405-000]

On January 17, 1986, Noah Corp., Aiken, S.C. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 75 megawatt hydroelectric facility (FERC P. 7399) is located on the Tygart Valley River, in Taylor Country, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

8. Noah Corp., Aiken, S.C. (Hildebrand Dam Hydroelectric Development)

[Docket No. QF86-409-000]

On January 17, 1986, Noah Corp., Aiken, S.C. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commissioner's regulations. No determination has been made that the submittal constitutes a complete filing.

The 9.6 megawatt hydroelectric facility (FERC P. 8654) is located on the

Monongahela River, in Monongalia County, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. Noah Corp., Aiken, S.C. (Gallipolis Dam Hydroelectric Development)

[Docket No. QF86-404-000]

On January 17, 1986, Noah Corp., Aiken, S.C. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 55 megawatt hydroelectric facility (FERC P. 8381) is located on the Ohio River, in Gallia County, Ohio.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

10. The Town of Summersville, West Virginia

[Docket No. QF86-410-000]

On January 17, 1986, the Town of Summersville, West Virginia (Applicant), of Town Hall, 400 Broad Street, Summerville, West Virginia 26651 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 70 megawatt hydroelectric facility (FERC P. 3493) is located on the Gauley River, in Nicholas County, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

11. Sun Cogeneration Limited Partnership

[Docket No. QF86-433-000]

On January 17, 1986, Sun Cogeneration Limited Partnership (Applicant), of P.O. Box 55060, 25115 W. Avenue, Stanford, Suite 120, Valencia, California 91355, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of three combustion turbine generating units with three waste heat recovery steam generators. Steam produced by the facility will be used by Sun Operating Limited Partnership in enhanced oil recovery operations. The electric power production capacity of the facility will be 225 MW. The primary energy source will be natural gas. The facility will begin operation in May, 1988.

The facility will be owned by a partnership consisting of Sun Cogeneration Inc., Sun Cogeneration Limited Partnership and Southern Sierra Energy Company (a subsidiary of Southern California Edison Company).

12. Warren County Energy Resources Co., L.P.

[Docket No. QF86-501-000]

On January 24, 1986, Warren County Energy Resources Co., L.P. (Applicant), of 4520 Executive Park Drive, Montgomery, Alabama 36116-1602 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Oxford Township, New Jersey. The facility will use biomass in the form of municipal solid waste (MSW) to generate approximately 11 MW of net electric power. No. 2 fuel oil will be used for start-ups and control uses.

Warren County Energy Resources Co., L.P. is a limited partnership with Blount Energy Resources Corp. as general partner and Louis A. Griffin as the limited partner. Neither partner is an electric utility or an electric utility holding company.

13. The Borough of Point Marion, Pennsylvania

[Docket No. QF86-413-000]

On January 17, 1986, the Borough of Point Marion, Pennsylvania (Applicant), of Point Marion Borough, Bldg., Point Marion, Pennsylvania 15474 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 5 megawatt hydroelectric facility (FERC P. 7660) is located on the Monogahela River, in Fayette County, Pennsylvania.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

14. The City of Broken Bow, Oklahoma

[Docket No. QF86-414-000]

On January 17, 1986, the City of Broken Bow, Oklahoma (Applicant), of P.O. Box 909, Broken Bow, Oklahoma 74728 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3 megawatt hydroelectric facility (FERC P. 3555) is located on Kiamichi River, in Choctaw County, Oklahoma.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or

Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3093 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-175-000]

Felmont Oil Corp. and Essex Offshore, Inc., Application for Certificate of Public Convenience and Necessity and for Pre-Granted Abandonment Authorization

February 7, 1986.

Take notice that on January 23, 1986, Felmont Oil Corporation (Felmont) and Essex Offshore, Inc. (Essex), of P.O. Box 10336, Stamford, Connecticut 06004-2336, filed this application for a certificate of public convenience and necessity authorizing Applicants to sell and deliver natural gas from Vermilion Block 86, Offshore Louisiana, to The Brooklyn Union Gas Company (Brooklyn Union), pursuant to a Gas Purchase Contract dated January 16, 1986, which is not sold to Transco and for pre-granted abandonment of this sale.

This certificate application is filed pursuant to authority granted to Applicants in Commission Opinion No. 245, which permits Applicants to sell natural gas to third parties to the extent not purchased by Transcontinental Gas Pipe Line Corporation (Transco). Opinion No. 245 also requires that Applicants first offer natural gas to Transco's firm customers. Applicants state that they offered available volumes to all Transco customers. Brooklyn Union is a Transco customer.

The gas to be sold and delivered to Brooklyn Union under the Certificate applied for will be subject to the ceiling prices provided by section 104 and 106(a) of the Natural Gas Policy Act of 1978.

Since Opinion No. 245 permits Applicants only to sell volumes not purchased by Transco to third parties for a three-year term, Applicants request pre-granted abandonment authority in this case. Applicants note that the Commission has routinely approved pre-granted abandonment in other spot sales of released gas. *E.g., Tenneco Oil Company*, 33 F.E.R.C. ¶ 61,133 (1985); *Amoco Production Company*, 33 F.E.R.C. ¶ 61,172(1985).

Any person desiring to be heard or to make any protest with reference to said application should on or before February 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3084 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 308-001]

Pacific Power and Light Co.; Issuance of Annual Licenses(s)

February 6, 1986.

On February 19, 1985, Pacific Power and Light Company licensee for the Wallowa Falls Project No. 308, filed an application for a new license under the Federal Power Act and the Commission's regulations. The project is located on the East Fork of the Wallowa River and Royal Purple Creek a tributary of the Wallowa River, in Wallowa County, Oregon. The project occupies about twelve acres of public land within the Wallowa Whitman National Forest.

The current license for Project No. 308 was issued effective March 1, 1976, for a period of ten years. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application for a new license, it is appropriate and in the public interest to issue an annual license to the Pacific Power and Light Company.

Take notice than an annual license is issued to the Pacific Power and Light Company for the period from March 1, 1986 to February 28, 1987, or until Federal takeover, or until issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Wallowa Falls Project No. 308 subject to the terms and conditions of the original license. Take further notice that if Federal takeover or issuance of a new license does not take place on or before February 28, 1987, a new annual license will be issued each year thereafter, effective March 1 of each year, until such time as Federal takeover takes place or a new license issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3085 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-204-000]

Pennsylvania Electric Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motion To Reject, Ordering Summary Disposition, Granting Waiver of Notice Requirement, and Establishing Hearing Procedures

Issued: February 4, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

On December 6, 1985, Pennsylvania Electric Company (Penelec) tendered for filing a proposed two-step increase in rates to its wholesale customers for full requirements, partial requirements, and wheeling service.[1] The Phase A rates would increase jurisdictional revenues by approximately $4.7 million (11.2%), and the Phase B rates would increase revenues by an additional $500,000, based upon a calendar 1986 test period. The company requests that the Phase A rates become effective on February 4, 1986, and the Phase B rates become effective on February 5, 1986. In the event that the Commission suspends the Phase B rates for only one day, Penelec requests that the Phase A rates be deemed withdrawn. In addition, the company submitted for filing an

[1] See Attachment for rate schedule designations.

unexecuted transmission service agreement between Penelec and Allegheny Electric Cooperative, Inc. (Allegheny) for the transmission of power generated by the New York Power Authority (NYPA). Penelec requests waiver of the notice requirement to permit an effective date of July 1, 1985.

Notice fo the company's filing was published in the **Federal Register**, [2] with comments due on or before December 31, 1985. Timely motions to intervene were filed by American Municipal Power-Ohio, Inc. (AMP-Ohio), Hydro Corporation of Pennsylvania (Hydro Corp.) and, jointly, by Allegheny and the Borough of Berlin, Pennsylvania (Petitioners). Amp-Ohio requests a five month suspension of Penelec's rates, but it does not raise any substantive issues.

Hydro Corp., a small power producer presently negotiating with Penelec for wheeling services, states that its rates will probably be modeled on the rates established in the instant docket. Hydro Corp. requests that the rates be suspended for five months and set for hearing. In support, its alleges an excessive return on equity. Hydro Corp. expresses concern that Penelec has allegedly requested that the Phase A rates to Allegheny be made effective retroactively to July 1, 1985, and that this may establish a precedent for future retroactive rate implementations.[3] In addition, Hydro Corp. alleges that Penelec has placed a restrictive clause in its tariff which limits the availability of its filed transmission rates to Allegheny and AMP-Ohio. Hydro Corp states that such a clause is unduly discriminatory and preferential.[4]

The Petitioners request that the rates be suspended for five months and set for hearing. In support, they raise numerous cost of service issues.[5] The Petitioners further request that Penelec's filing be made deficient because the Company allegedly has failed to submit complete statements and workpapers. While the Petitioners do not object to the effective date of July 1, 1985, for the proposed transmission service agreement, they dispute the propriety of several provisions of the unexecuted agreement.

On January 10, 1986, Penelec filed an answer to the pleadings filed by the Petitioners, AMP-Ohio, and Hydro Corp. The company opposes Hydro Corp.'s intervention, stating that as a mere potential future customer of Penelec, Hydro Corp. has no interest which will be affected by the outcome of this proceeding. Penelec opposes the request for a five month suspension or rejection of its rates and disputes the specific allegations raised in the intervenors' motions.[6]

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make AMP-Ohio and the Petitioners parties to this proceeding. Notwithstanding the company's opposition to Hydro Corp.'s intervention, we find that good cause exists to grant its motion. We are satisfied that Hydro Corp. has alleged an interest in the outcome of this proceeding that is not represented by another party, and that its participation may be in the public interest. Accordingly, we shall grant the motion to intervene.

In support of their request for rejection, the Petitioners allege that Penelec has failed to submit complete statements and workpapers. Having evaluated the company's submittal, we find that it minimally satisfies our threshold filing requirements and is not patently deficient. Therefore, we shall deny the request for rejection.

We consider it appropriate to order summary disposition with respect to two items in the company's cost of service. First, Penelec has included Electric Power Research Institute (EPRI) costs in the cost of service. The inclusion of such costs contravenes clear Commission precedent.[7] Second, the company has included in rate base the unamortized portion of an extraordinary property loss relating to an abandoned coal mining venture. Whether or not amortization of this loss is otherwise approriate, rate base inclusion of the unamortized portion is contrary to well-established Commission precedent.[8] Because the cost of service impact resulting from the inclusion of these two items is *de minimus*, we shall not require Penelec to refile its rates at this time. However, we shall require Penelec to reflect our determinations in its compliance cost of service submitted at the conclusion of this proceeding.

Our review of Penelec's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the Phase A and the Phase B rates may not yield substantially excessive revenues. Accordingly, we shall accept the Phase B rates for filing and suspend them for one day, to become effective on February 6, 1986, subject to refund. In accordance with Penelec's requests, the Phase A rates will be deemed withdrawn.

Penelec requests waiver of the notice requirements to permit the transmission

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[2] 50 FR 53,006 (1985).

[3] We note the Hydro Corp. has mischaracterized Penelec's submittal in this regard. Penelec does not seek to implement the Phase A rates for any customer prior to February 4, 1986. Rather, the company proposes that, beginning on July 1, 1985, Allegheny will be served at the existing transmisssion rate under which Allegheny currently receives other transmission services.

[4] Contrary to Hydro Corp.'s assertion, Penelec does not have a transmission tariff, but rather provides transmission service to Allegheny and AMP-Ohio pursuant to separate rate schedules. There is, therefore, no availabilty restriction to be rejected or modified, as requested by Hydro Corp. Insofar as Hydro Corp. may be alleging that it is Penelec's practice to provide transmission service by way of individual bilateral agreements, rather than by tariff, there is nothing *per se* unlawful with providing services under individual rate schedules. In any event, Hydro Corp. has submitted a September 5, 1985 letter wherein Penelec states that it is willing to provide transmission services to Hydro Corp. Therefore, it appears that Hydro Corp. has not been harmed by Penelec's election not to adopt a tariff format.

[5] The issues raised include: (1) Excessive rate of return, cash working capital allowance, fuel inventory, and A&G expenses; (2) improper allocation of customer service, information and customer account expenses to the wholesale class; (3) improper classification of certain O&M expenses; (4) improper allocation of pollution control CWIP; and (5) failure to support the derivation of the make-up provision for deferred income taxes.

[6] On January 16, 1986, Hydro Corp. filed a response to Penelec's opposition to its intervention. Because the Commission's Rules of Practice and Procedure do not permit the filing of a responsive pleading to an answer, we shall disregard this pleading. 18 CFR 385.213(a)(2).

[7] *E.g., Northern States Power Co. (Wisconsin)*, 17 FERC ¶ 61,019

[8] *E.g., New England Power Company*, Opinion No. 49, 8 FERC ¶ 61,054, *reh. denied*, 10 FERC ¶ 61,279 (1980), *aff'd sub nom. NEPCO Municipal Rate Committee* v. *FERC*, 668 F.2d 1327, 1332-35 (D.C. Cir. 1981) *cert. denied*, 457 U.S. 1117 (1982). We are currently revisiting, on a generic basis, our policy regarding the treatment of the costs of cancelled plant, which is another type of extraordinary property loss. *See New England Power Company*, 32 FERC ¶ 61,453, (1985). As we stated in that order, any change in Commission policy would be prospective only, and utilities are required to adhere to the precedent established in Opinion No. 49 pending reconsideration of our policy

service agreement for the delivery of NYPA power to become effective on July 1, 1985, the date on which service commenced. In light of Allegheny's support for the waiver, but its objection to various provisions of the service agreement, we find good cause to grant waiver of the notice requirement and we shall accept the transmission service agreement for filing but we shall suspend it to become effective on July 1, 1985, subject to refund.

The Commission orders

(A) Hydro Corp.'s motion to intervene is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) The Petitioners' motion to reject Penelec's filing is hereby denied.

(C) Summary disposition is hereby ordered, as noted in the body of this order, with respect to: (1) Penelec's inclusion of EPRI expenses in the wholesale cost of service; and (2) the inclusion of the unamortized portion of extraordinary property losses in rate base. Penelec shall reflect these summary dispositions in its compliance cost of service filed at the conclusion of this proceeding.

(D) Penelec's Phase B rates are hereby accepted for filing and suspended for one day to become effective on February 6, 1986, subject to refund. Penelec's Phase A rates are hereby deemed withdrawn.

(E) Waiver of the notice requirement is hereby granted.

(F) The transmission service agreement is hereby accepted for filing and suspended, to become effective on July 1, 1985, subject to refund.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Penelec's rates and terms of service.

(H) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(I) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(J) Subdocket 000 of Docket No. ER86-204 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER86-204-001.

(K) The Secretary shall promptly publish this order in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3061 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2978-001, et al.]

Sun Exploration and Production Co., et al.; Applications for Abandonment of Service

February 7, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 24, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location[9]	Price per Mcf	Pressure base
G-2978-001, D, Feb. 3, 1986	Sun Exploration & Production Co. P.O. Box 2880, Dallas, Texas 75221-2880.	El Paso Natural Gas Company, Spraberry Trend Field, Midland, Upton and Reagan Counties, Texas.	[1]	
G-2978-002, D, Feb. 3, 1986	....do	....do	[2]	
G-18303-001, D, Feb. 3, 1986	....do	El Paso Natural Gas Company, Rhodes Field, Lea County, New Mexico.	[3]	
CI66-172-002, D, Dec. 19, 1985	....do	Texas Gas Transmission Corporation, Maurice Field, Lafayette and Vermilion Parishes, Louisiana.	[4]	
CI85-530-001, D, Jan. 27, 1986	Fina Exploration, Inc. (Succ. in Interest to American Petrofina Company of Texas). P.O. Box 2159, Dallas, Texas 75221	Northern Natural Gas Company, Block A-571, High Island Area, South Addition, Offshore Texas.	[5]	
CI86-184-000, (G-17857) B, Jan. 27, 1986.	Chevron U.S.A. Inc., P.O. Box, 7309, San Francisco, Calif. 94120-7309.	Texas Gas Transmission Corporation, North Dubberly Field, Webster Parish, Louisiana.	[6]	
CI67-1085-003, D, Jan. 31, 1986	Sun Exploration & Production Co.	Ringwood Gathering Company, Ringwood, S.W. Field, Major County, Oklahoma.	[7]	
CI61-737-003, D, Jan. 31, 1986	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Transwestern Pipeline Company, Catesby Field, Ellis County, Oklahoma.	[8]	
CI61-1429-002, D, Feb. 3, 1986	Sun Exploration & Production Co.	El Paso Natural Gas Company, Langlie Mattix & Rhodes Fields, Lea County, New Mexico.	[3]	
CI75-143-000, D, Feb. 3, 1986	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Trunkline Gas Company, South March Island Block 261 Field, Offshore Louisiana.	[9]	

[1] Sun Property No. 860006, Merchant Unit, sold to Cass Oil Company.
[2] Sun Property No. 889024, Trammel, sold to Cass Oil Company.
[3] Property sold to Texaco, Inc.
[4] Partial Assignment and Bill of Sale covering Sun Property No. 855212 Triumph Energy, Inc.
[5] Northern Natural gas has exercised its contractual right to decline to attach new reserves developed in this block and has released these reserves from the contract. There were two wells producing from the dedicated acreage. The Ada P. Alexander Unit #1 was plugged and abandoned in June 1970. The Thomas Crickton, Jr. Unit #1 was plugged and abandoned in November 1978.
[6] Partial Assignment and Bill of Sale covering Sun Property No. 827119, Ersel, to Ronny g. Altman (75%) and Paul J. Woodul (25%).
[7] A portion of the Catesby Field was assigned to Sun Exploration and Production Company effective December 1, 1985.
[8] Assignment of a part of Texaco's interest to Huffco Petroleum Corporation.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add coverage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-3086 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP74-41-038, et al.]

Texas Eastern Transmission Corp. et al.; Filing of Pipeline Refund Reports and Refund Plans

February 7, 1986.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 18, 1986. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary

APPENDIX

Filing date	Company	Docket No.	Type filing
1-2-86	Texas Eastern Transmission Corp.	RP74-41-038	Report.
1-10-86	Natural Gas Pipeline Co. of America.	RP85-99-005	Btu.*
1-24-86	Lone Star Gas Co.	RP85-76-003	Btu.*
1-27-86	East Tennessee Natural Gas Co.	RP81-54-023	Report.
1-27-86	Transcontinental Gas Pipe Line Corp.	RP85-69-004	Report.
1-27-86	Consolidated Gas Transmission Corp.	RP85-87-003	Btu.*
1-28-86	Algonquin Gas Transmission Co.	RP72-110-040	Report.

*Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic docket number and future related filings will receive new sub-docket numbers.

[FR Doc. 86-3087 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-209-000]

United Gas Pipe Line Co.; Informal Settlement Conference

February 4, 1986

Take notice that on February 13, 1986, at 10:00 a.m., an informal settlement conference will be convened to discuss the possibilities of settlement in the above-captioned case. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The conference will continue on February 14, 1986, if necessary.

All interested persons and Commission Staff are invited to attend; however, attendance at the conference will not confer party status. Any person wishing to become a party to these proceedings must file a motion to intervene in accordance with Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

For further information, contact Joel L. Saltzman, (202) 357-5354, or Andrew P. Mosier, Jr., (202) 357-8093, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3062 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-40-000]

Westar Transmission Co. v. Northern Natural Gas Company, a Division of InterNorth, Inc.; Complaint

February 7, 1986.

Take notice that on January 26, 1986, Westar Transmission Company (Westar) tendered for filing a Complaint And Request For Investigation under section 5(a) of the Natural Gas Act. In its Complaint, Westar requests that the Federal Energy Regulatory Commission (Commission) find that Northern Gas Company's, (Northern) charged a rate, for the period from July 31, 1984, to October 27, 1985, which had never been filed. Westar asserts that Northern's action violated both the filed rate doctrine, embodied in sections 4 and 5 of the Natural Gas Act, the provisions of § 154.111 of the Commission's Regulations,[1] and Commission Order No. 380.[2] Westar also requests that the Commission find Westar's refusal to pay amounts sought to be collected by Northern's invoicing mechanism to be lawful.

Westar asserts that Northern has attempted to unlawfully collect $7 million from Westar, through the minimum bill provisions of Northern's Rate Schedule Nos. X-17 and X-86 (which Westar alleges provide for the recovery of both fixed and variable costs) for the period July 31, 1984, to October 27, 1985. Westar argues that Northern failed to change its tariff, as required by Order No. 380, before presenting Westar with monthly invoices which allegedly reflect minimum bill amounts that did not contain any variable charges. Westar further contends that it has lawfully refused to pay that amount because Northern is attempting to charge Westar a rate different from that which was on file and in effect under its Thirty-Eighth Revised Sheet No. 1C. Westar complains that the unfiled rate which Northern seeks to charge, as a minimum bill, is approximately 62¢ per Mcf and may contain certain variable costs.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure.[3] All such motions or protests should be filed on or before March 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Westar states that a copy of the complaint was served on Northern. Northern's answer shall be due on or before March 10, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3088 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[1] 18 C.F.R. § 154.111 (1985).

[2] 3 FERC Stat. & Reg. ¶30,571, Docket No. RM83-71-000.

[3] 18 C.F.R. 385.211, 385.214 (1985).

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of January 27 through January 31, 1986

During the week of January 27 through January 31, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. the following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

ESSRO, 1/30/86; KFA-0009

ESSRO, an Arizona non-profit association, filed an Appeal from a partial denial by the Authorizing Official of the Western Area Power Administration (WAPA) of a request for information which the association had submitted under the Freedom of Information Act. In the request, ESSRO sought information pertaining to the construction and operation of the Liberty-Coolidge and Parke-Phoenix No. 1 power transmission lines, as well as a fee waiver. The Authorizing Official denied the fee waiver, and stated that he would release some of the documents to ESSRO upon receiving payment for processing the association's information request. In considering the Appeal, the DOE determined that there was a significant public interest in the subject matter of the request and that ESSRO had the expertise to interpret and disseminate the information to the public. The DOE, however, also found that ESSRO's members—landowners, farmers, and businessmen—had a personal interest in using this information to oppose the construction of the power lines. The DOE, therefore, determined that a 50 percent reduction of fees was warranted. In addition, the DOE determined that the WAPA failed to respond adequately to ESSRO's information request. Specifically, the DOE determined that upon remand, the Authorizing Official must provide ESSRO with an index of withheld documents together with an explanation of the statutory exemption which permits the agency to withhold such documents. Further, the WAPA must determine whether any responsive segregable nonexempt material exists. Accordingly, the Appeal was granted in part and remanded for further consideration.

Arthur Scarla, 1/31/86; KFA–0002

Arthur Scarla filed an Appeal from a denial by the Department of Energy Albuquerque Operations Office of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the determination by the Director of the Operations Office was inadequate because it did not fully explain the reasons for withholding the requested information under the specified FOIA exemptions. Accordingly, the DOE remanded the matter to the Director for either a release of the requested unit price information, or a new determination that adequately justifies withholding the requested information in light of the applicable regulations.

Requests for Exception

Deiter Brothers Fuel Company, Inc., 1/29/86; HEE–0152

On May 31, 1985 Deiter Brothers Fuel Co., Inc. (Deiter Brothers) filed an Application for Exception in which it sought relief from its obligation to submit Form EIA–782B, entitled "Reseller/Retailers' Montly Petroleum Product Sales Report." After the firm's application was denied in a Proposed Decision, the firm filed a Statement of Objections on October 7, 1985. In considering Deiter Brothers' exception application and Statement of Objections, the DOE found that the firm was not adversely affected by the requirement that it file Form EIA–782b. Accordingly, exception relief was denied to Deiter Brothers.

Ozona Gas Processing Plant, 1/30/86; HEE–0080

On December 7, 1983, Ozona Gas Processing Plant (Ozona), filed an application for exception from the provisions of 10 CFR 212.131 in which the firm sought retroactive exception relief from the two month crude oil tier certification rule set forth at 10 CFR 212.131(a)(6). In considering the request, the OHA found that the firm had failed to make a sufficient showing to warrant the requested relief. In particular, the OHA found that Ozona had failed to pursue its administrative remedies promptly. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

Hicks Oil and Hicks Gas Company, Inc., 1/31/86, HEF–0091

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling $83,646 obtained as a result of a Consent Order entered into between the DOE and Hicks Oil and Hicks Gas Company, Inc. The Decision sets forth refund application procedures for certain customers who purchased propane from Hicks' wholly owned subsidiary, Rocket Supply Company, during the period covered by the Consent Order—November 1, 1973 through December 31, 1975. Specific information regarding the data to be included in refund applications is discussed in the Decision.

Refund Applications

Blaylock Oil Company, Inc./Defense Logistics Agency, 1/29/86; RF221–1

The DOE issued a Decision and Order granting a refund from the escrow account funded by Blaylock Oil Company, Inc. (Blaylock), of Homestead, Florida, to the Defense Logistics Agency (DLA), which purchased motor gasoline from Blaylock during the October 1, 1979 through December 31, 1979 consent order period. The DLA purchases petroleum products for the use of government agencies and as such petroleum products for the use of government agencies and as such is an end-user of those petroleum products. The DLA was therefore required only to establish its volume of purchases from Blaylock. The DLA was granted a refund of $2,686 ($1,783 principal plus $903 interest).

Boswell Oil Company/Barton Brands, Ltd. et al., 1/31/86; RF179–2 et al.

Applications for Refund were filed by five firms that purchased refined pertroleum products from the Boswell Oil Company. The applications were evaluated in accordance with the procedures set forth in *Boswell Oil Co.*, 13 DOE ¶ 85,088 (1985). The OHA issued a Decision and Order approving the applications and granting refunds totalling $20,910.

Cosby Oil Company/Yucca Valley Liquor Store, Five Point U-Serve, Inc.; 1/31/86, RF170–3, RF170–4

The DOE issued a Decision and Order concerning Applications for Refund filed by Yucca Valley Liquor Store and Five Point U-Serve, Inc. Although each applicant documented its purchase volumes of Cosby motor gasoline, the DOE determined that neither applicant was entitled to receive a refund. Specifically, the DOE found that the two applicants were under the same ownership and management as Cosby during the consent order period and should therefore be barred by the equitable doctrine of unclean hands from seeking restitution in the Cosby special refund proceeding. Accordingly, their Applications for Refund were denied.

Gulf Oil Corporation/Main-Shimmerville Gulf Service et al.; 1/31/86, RF40–02234 et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 7 purchasers of Gulf refined petroleum products. The refunds from these firms totaled $10,460, representing $8,924 in principal and $1,536 in interest.

Hendel's Inc./Star Chevron Gas; 1/30/86, RF79–25

The Office of Hearings and Appeals granted an Application for Refund filed by Star Chevon Gas from a fund obtained through a Consent Order which it entered into which Hendel's, Inc. The applicant was a retailer who requested a refund below the $5,000 small claims threshold level. The total amount of the refund granted was $2,359, consisting of $1,378 in principal plus $981 in interest.

Huskey Oil Company/Dallas & Mavis Forwarding Company, Inc., et al.; 1/27/86, RF161–5 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by Dallas & Mavis Forwarding Company, Inc., *et al.* Each of the applicants had purchased refined petroleum products from Husky Oil Company, and each sought a portion of the settlement fund obtained by the DOE through a consent order with Husky. Five of the six firms applied for refunds based upon the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). The one remaining applicant was eligible to apply for a refund greater than $5,000, but elected to limit its claim to $5,000 and follow the small claims procedures. After examining the applications, the DOE concluded that each of the six firms should receive a refund based on its volumetric per gallon refund amount. The total amount of refunds granted was $24,619.

Husky Oil Company/Kerbs Oil Co., Inc., et al.; 1/27/86, RF161–24 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by Kerbs Oil Co., Inc., *et al.* Each of the applicants had purchased refined petroleum products from Husky Oil Company, and each sought a portion of the settlement fund obtained by the DOE through a consent order with Husky. Five of the seven firms applied for refunds based upon the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). The two remaining applicants were eligible to apply for refunds greater than $5,000, but elected to limit their claims to $5,000 and therefore also followed the small claims

procedures. After examining the applications submitted by the firms, the DOE concluded that each of the seven firms should receive a refund based on its volumetric per gallon refund amount. The total amount of refunds granted was $26,158.

Inland U.S.A., Inc./UCO Oil Company, 1/27/86, RR176–1

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by UCO Oil Company. In that Motion, UCO requested that the DOE reconsider a November 25, 1985 Decision and Order granting in part an Application for Refund filed by the firm in the Inland U.S.A., Inc. Special Refund Proceeding. Specifically, UCO stated that it should receive a refund above the $5,000 small claims threshold despite its inability to demonstrate that it did not pass the alleged Inland overcharges through to its customers. In view of the fact the UCO neither submitted any additional evidence to support its refund claim, nor gave any compelling reasons why it should be exempt from the showing of injury requirement established in the November 25 Decision and Order, the DOE determined that UCO's Motion for Reconsideration should be denied.

Leese Oil Company/Glen's Chevrolet-Subaru et al.; 1/31/86, RF211–1 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three end-users of motor gasoline purchased from Leese Oil Company. In accordance with the procedures established in the Leese Special Refund Proceeding, we determined that each applicant should receive a refund based on the volumes of motor gasoline it purchased during the consent order period. The total amount of refunds approved in this Decision is $2,383 ($2,016 principal plus $367 interest).

Standard Oil Company (Indiana)/Sauvage Gas Company; 1/31/85, RF21–12402

Sauvage Gas Company (Sauvage) filed an Application for Refund in which the firm sought a portion of the funds obtained by the DOE through a Consent Order with Standard Oil Company (Indiana) (Amoco). Sauvage was awarded a refund of $5,000 principal and $3,591 interest.

Windham Gas and Oil Co./Ohio National Helium Corp./West Virginia Pennzoil Co./West Virginia; 1/28/85, RM43–12, RM3–13, RM10–14

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order approving the State of Ohio's motion to modify its restitutionary plan which the OHA approved in an earlier decision for a portion of the Windham Gas and Oil Co. (Windham) escrow funds allotted to the state. Ohio was granted permission to use $6,000 of the Windham funds which it has received as a matching requirement for the purchase of a passenger vehicle to be operated in Portage County, Ohio. In that Decision, the OHA also approved West Virginia's restitutionary plan to use $174,889 in principal and interest from the National Helium Corp. and Pennzoil Co. escrow accounts to fund a traffic light synchronization program in Clarksburg, West Virginia and to expand the erection of interstate logo signs within the state. The OHA authorized disbursement of only the National Helium Corp. funds to West Virginia at this time because of litigation pending against the Pennzoil Co. funds.

Name	Dismissals case no.
Chuck Hansen	KFA-0015
Northside Gulf	RF40-724
Palmetto Gas Co.	RF21-12404
Quality Oil Co.	RF21-12403
Red Top Sedan Service Inc.	RF40-1544 thru RF40-1554, RF40-1559
Smith & Cyphers Service Station	RF40-506
Smokey's Gulf Service	RF40-689

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 4, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–3078 Filed 2–11–86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $1,009,609.84 obtained as a result of a consent order which the DOE entered into with Northeast Petroleum Industries, Inc., a reseller-retailer of petroleum products located in Chelsea, Massachusetts. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0138.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $1,009,609.84 plus accrued interest obtained by the DOE under the terms of consent order entered into with Northeast Industries, Inc. The funds were provided to the DOE by Northeast to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the consent order period May 1, 1974, through August 31, 1979.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline from Northeast. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Northeast and to demonstrate that it was injured by Northeast's pricing practices. Applicants must submit specific documentation regarding the date, place, price and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposing refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday

through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: February 4, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 4, 1986.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Northeast Petroleum Industries, Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0138

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1984, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Northeast Petroleum Industries, Inc., (Northeast) and its subsidiaries.

I. Background

Northeast is a "reseller-retailer" of petroleum products as that term was defined in 10 CFR 212.31, with its home office located in Chelsea, Massachusetts. Based on an audit of Northeast's records, ERA alleged that Northeast had committed possible violations of the Mandatory Petroleum Price Regulations with respect to the firm's sale and allocation of motor gasoline during the period, May 1, 1974 through August 31, 1979. 10 CFR Part 212, Subpart F.

In order to settle all claims and disputes between Northeast and the DOE regarding the firm's sales of motor gasoline during the period covered by audit, Northeast and the DOE entered into a consent order on June 17, 1980. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Northeast does not admit that it violated the regulations.

Under the terms of the consent order, Northeast agreed to deposit $840,000, plus installment interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Including installment interest, Northeast's deposit totaled $1,009,609.84, which we will consider the principal figure in this proceeding. Northeast completed its payments on March 15, 1985. This decision concerns the distribution of the funds in the Northeast escrow account.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or readily ascertain the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of motor gasoline that were injured by Northeast's alleged pricing practices between May 1, 1974 and August 31, 1979 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (Amoco).

A. Refunds to Identifiable Purchasers

In the first stage of the Northeast refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Northeast's alleged overcharges. As we have done in many prior refund cases, we proposed to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that end users experienced injury.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Northeast times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.000998 per gallon.[2] In addition, successful

[1] As of December 31, 1985, the Northeast escrow account contained a total of $1,612,757.93, representing $1,009,609.84 in principal and $603,148.09 in accrued interest.

[2] The volumetric factor is computed by dividing the amount of principal by the total number of gallons of covered product sold by the consent order firm during the consent order period. In this case, since the audit papers included no information regarding Northeast's sales of motor gasoline, we contacted the firm to request sales volume information. The $0.000998 figure was derived by dividing the $1,009,609.84 principal amount by the

Continued

claimants will receive a proportionate share of the accrued interest.

Second, we plan to presume that purchasers of Northeast's products seeking small refunds were injured by Northeast's pricing practices. There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. Such a demonstration, if even possible, would generally be very time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the value of any expected refund as well as any analytic benefits to be derived. Consequently, without simplified procedures, some potential claimants cound be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant that is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Principal among the factors which determine the value of this threshold is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the small claim threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

1,012,031,000 gallons of motor gasoline which Northeast reported it sold during the consent order period. *See*, January 24, 1986 Letter from Martin H. Levine, Senior Vice President of Finance and Administration for Northeast.

Unlike threshold claimants, a reseller or retailer applicant which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that it maintained a "bank" of unrecovered product costs, and that market conditions would not permit it to pass through those increased costs.[3]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have experienced injury. This is true because—

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Accordingly, we propose that resellers and retailers which made only spot purchases from Northeast not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

We are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entitles were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of overcharges. *See Office of Enforcement*, 10 DOE ¶ 85,072, (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. In addition, the audit papers indicated that many of Northeast's customers were motorists which purchased motor gasoline from Northeast's retail stations. Obviously, individual, consumer-purchasers absorbed the increased product costs, as distinguished from resellers which may have had the opportunity to pass through those costs to their own customers. *See Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). Therefore, we propose that for all end users of motor gasoline sold by Northeast, documentation of purchase volumes will provide a sufficient showing of injury.[4]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Northeast's sales of gasoline. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545, at 85,244 (1982) (*Pennzoil*). Those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

III. Applications for Refund

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of motor gasoline from Northeast. An applicant claiming injury at a level greater than the threshold level should include specific information as to the volume and price of gasoline purchased, the date of purchase, the name of the firm from which the purchase was made, and the extent of any injury alleged. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the

[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[4] For motorists documentation might be in the form of credit card or other receipts and, if no gallonage is recorded on the receipt, customers may extrapolate purchase volumes by estimating the per gallon price of the motor gasoline purchased. If no such form of documentation exists, we propose that applicants may submit estimates of purchases accompanied by a detailed explanation of how the estimated purchase volumes were derived. This information might include, for example, the type and number of vehicles owned, the average number of miles driven, etc.

applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finaly, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Northeast Petroleum Industries, Inc. pursuant to the Consent Order executed on June 17, 1980, will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-3079 Filed 2-11-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-40006C; FRL 2941-4]

Approval of Revised Department of Defense Plan for Certification of Pesticide Applicators

Correction

In FR Doc. 85-30167, beginning on page 51947, in the issue of Friday, December 20, 1985, make the following correction:

In the third column, fourth line from the bottom of the page, the effective date should read "December 20, 1985".

BILLING CODE 1505-01-M

[OPP-00219; FRL-2968-7]

Pesticide Registration Standards; Notice of Registration Standards Issued in FY 85 and Registration Standards Scheduled for FY 86

AGENCY: Environmental Protection Agency [EPA].

ACTION: Notice.

SUMMARY: This notice lists pesticide Registration Standards that were issued in Fiscal Year (FY) 1985, as well as those scheduled for development and/or issuance in FY 86. The Agency requests the submission of comments and information on the pesticides scheduled for Registration Standard development in FY 86. Registration Standards may be purchased from the National Technical Information Service (NTIS) approximately 60 days after their issuance. This notice lists Registration Standards currently available from NTIS and Pesticide Fact Sheets which may be obtained from EPA.

ADDRESSES: Written comments on scheduled pesticides should be submitted on or before April 14, 1986. Comments should be identified with the docket number listed with each pesticide chemical and should be submitted to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of a comment that does not contain CBI must be submitted for inclusion in the public docket. Information not designated "confidential" may be disclosed publicly by EPA without prior notice to the submitter. The public docket will be available for public inspection and copying in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

Approximately 60 days after their issuance, Registration Standards may be purchased from the: National Technical Information Services (NTIS), 5285 Port Royal Rd., Springfield, VA 22151, (703) 487-4650.

Prices for paper copies vary depending on length of the document. As of the publication date of this notice, all microfiche copies may be obtained at a cost of $4.50 each. Since prices are subject to change, please call NTIS regarding current document prices before placing your order. NTIS accepts all major credit cards, as well as charges to deposit accounts. Documents may be ordered by supplying NTIS with the document stock number listed in Unit II of this notice. It the stock number is unlisted, the document may be ordered by the title "Guidance for the Reregistration of Pesticide Products Containing [Name of Chemical]."

FOR FURTHER INFORMATION CONTACT: By mail: David Alexander, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-3942.

For additional information on Pesticide Fact Sheets, and to obtain copies of specific fact sheets, contact:

By mail: Nancy Hemming, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7700).

SUPPLEMENTARY INFORMATION: The Registration Standards program is EPA's approach to the reassessment and reregistration of pesticides as mandated by Congress in section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The 48,000 pesticide products currently registered by EPA contain some 600 distinct active ingredients. Under this program the scientific data base underlying each active ingredient is thoroughly reviewed, and essential but missing scientific studies are identified.

The reassessment may result in requirements for submission of data needed to fully evaluate the safety of the compound according to contemporary scientific standards. The results of the review are reflected in a Registration Standard, which states the Agency's

regulatory positions regarding the products containing an active ingredient and the rationale for each position, as well as requirements for submission of additional data needed to complete the assessment, and label warnings or other regulatory restrictions needed to protect health and the environment.

The purpose of this notice is to inform the public of Registration Standards issued in FY 85 and those currently under development. It also serves to provide the public with an opportunity to submit additional data pertinent to these reviews, and to explain how information resulting from the EPA's reviews can be obtained.

EPA encourages the public to provide information relevant to the review of individual active ingredients for which Registration Standards are scheduled in FY 86. The Agency is particularly interested in receiving the following types of information: human toxicology, residue chemistry, product chemistry, environmental fate, human exposure, or ecological effects.

I. Registration Standards Issued in FY 85

Registration Standards were issued for the following pesticides in FY 85, ending September 30, 1985:

Bentazon
Cyanazine
Cyhexatin
Demeton
Diflubenzuron
Dipropetryn
Disulfoton
Fluchloralin
Hyamine 3500
Landrin
Lindane
Metribuzin
Monocrotophos
Naptalam
Nitrapyrin
Norflurazon
Pendimethalin
Perfluidone
Picloram
Potassium permanganate
Propachlor
Sodium-Omadine
Sulfuryl fluoride
3,5-Dibromosalicylanilide

In addition, reviews of three additional pesticides were completed in FY 85: amitraz, acephate, and copper sulfate. A **Federal Register** notice was published on January 15, 1986 (51 FR 1986) announcing the availability of these draft Registration Standards for public comment. These standards are scheduled to be finalized in FY 86.

II. Registration Standards Under Development in FY 86

The chemicals in the following table will have Registrating Standards under development in FY '86:

Chemical	Docket No.	Approximate date of issuance
1. Chlordimeform	6164-98-3	December 1985.
2. Fluometuron	2164-17-2	Do.
3. Oryzalin	19044-88-3	Do.
4. Thiophanate-Ethyl	23564-06-9	Do.
5. Captan	133-06-2	February 1986.
6. Thiophanate-Methyl	23564-05-08	Do.
7. Ethyl Parathion	56-48-2	March 1986.
8. Trifluralin	1582-09-8	Do.
9. Pronamide	23950-58-5	Do.
10. Benomyl	17804-35-2	Do.
11. Paraquat dichloride	1910-42-5	Do.
12. 1,3-Dichloro-propene (Telone).	542-75-6	April 1986.
13. Diquat dibromide	85-00-7	May 1986.
14. Aldrin	309-00-2	June 1986.
15. Dieldrin	60-57-1	Do.
16. Mehtyl parathion	298-00-0	Do.
17. Bacillus thuringiensis	68038-71-1	Do.
18. Glyphosate	1071-83-6	July 1986.
19. Methyl bromide	74-83-9	Do.
20. Arsenic Acid	01-04-06	Do.
21. Coal tar	8007-45-2	Do.
22. Creosote	8021-39-4	Do.
23. Azinphos-Methyl (Guthion).	86-50-0	August 1986.
24. Phosmet	732-11-6	Do.
25. Dinoseb	88-85-7	Do.
26. Propargite	2312-35-8	Do.
27. Copper chlorides/Nitrates.	02-03-4	Do.
28. Terbutryn	886-50-0	September 1986.
29. PCNB	82-68-8	Do.
30. Metolachlor (Final Regulatory Standard & Tolerance Re-assessment).	51218-45-2	Do.
31. Heptachlor	76-44-8	Do.
32. Chlordane	12789-03-6	Do.
33. Formaldehyde	50-00-0	Do.
34. Chromated Arsenicals	01-03-05	Do.
35. Folpet	133-07-3	October 1986.
36. Diazinon	333-41-5	Do.
37. DDVP	62-73-7	December 1986.
38. EPN	2104-64-5	Do.
39. Nabam	142-59-6	Do.
40. Mancozeb	12001-34-2	Do.
41. Maneb	301-03-1	Do.
42. Metiram	01-02-03	Do.

III. Pesticide Fact Sheets

Upon request after issuance of a Registration Standard, EPA will furnish Pesticide Fact Sheets which summarize information about a specific pesticide or group of pesticides. Fact sheets include a description of the chemical use patterns and formulations, science findings, a summary of the Agency's regulatory position/rational, and a summary of major data gaps. They are issued if one of the following regulatory actions occurs:

(1) A Registration Standard is issued.

(2) A significantly different use pattern is registered.

(3) A new chemical is registered.

Fact sheets have been prepared for Registration Standards prepared since June 1983 and for new chemicals and for chemicals with significantly changed use patterns registered since January 1984. The fact sheets now available are as follows:

Chemical	Date issued	Fact Sheet No.
Actellic	June 30, 1985	59
Alachlor	Nov. 20, 1984	40
Aldicarb	Mar. 30, 1984	19
Aliette	June 30, 1983	1
Amitrole	Mar. 30, 1984	20
Anilazine	Dec. 13, 1983	12
Arosurf	Feb. 15, 1984	17
Arsenal	Sept. 5, 1985	63
Bentazon	Sept. 30, 1985	64
Bronopol	Aug. 2, 1984	32
Butylate	Sept. 30, 1983	7
Captafol	Sept. 30, 1984	35
Carbaryl	Apr. 30, 1984	21
Carbofuran	June 25, 1984	24
Carbophenothion	June 30, 1984	25
Chlorobenzilate	Dec. 30, 1983	15
Chlorothalonil	Sept. 30, 1984	36
Chlorpyrifos	do	37
Chlorpyrifos methyl (Reldan)	June 30, 1985	57
Copper Sulfate	Sept. 30, 1985	69
Cryolite	June 30, 1983	2
Cyanazine	Dec. 1, 1984	41
Cyhexatin	June 30, 1985	56
Daminozide (Alar)	June 30, 1984	26
Dantochlor	Sept. 12, 1984	33
DCNA	Dec. 14, 1983	13
Demeton	Feb. 27, 1985	45
3,5-Dibromo salicylanilide	Sept. 30, 1985	67
Dicamba	Sept 30, 1983	8
Dicofol	Dec. 30, 1985	16
Diflubenzuron	Sept. 30, 1985	68
Dipropetryn	June 30, 1985	55
Disulfoton	Jan. 18, 1985	43
Diuron	Sept. 30, 1983	9
EPTC	Sept. 3, 1983	6
Ethalfluralin	June 30, 1985	58
Ethoprop	Feb. 30, 1985	3.1
Fenaminosulf	Sept 30, 1983	10
Fenarimol	Feb. 27, 1985	46
Fensulfothion	Feb. 1985	14.1
Fluchloralin	June 30, 1985	52
Fonofos	Feb. 1985	22.1
Formetanate HC1	Sept. 30, 1983	11
Glycoserve	Mar. 8, 1985	47
Heliothis	June 30, 1984	27
Linalool	Oct. 15, 1985	77
Lindane	Sept. 30, 1985	73
Linuron	June 30, 1984	28
Metribuzin	June 30, 1985	53
Monocrotophos	Sept. 30, 1985	72
Naled	June 30, 1983	4
Naptalam	Apr. 30, 1985	49
Nitrapyrin	June 28, 1985	54
Norflurazon	Dec. 1, 1984	60
Paclobutrazol	Aug. 14, 1985	62
Pendimethalin	Mar. 31, 1985	50
Perfluidone	Sept. 30, 1985	74
Phorate	Feb. 1985	34.1
Picloram	Mar. 29, 1985	48
Potassium bromide	Sept. 30, 1984	38
Potassium permanganate	Sept. 30, 1985	66
Propachlor	Feb. 11, 1985	44
Simazine	Mar. 30, 1984	23
Sodium omadine	July 16, 1985	61
Sulfuryl fluoride	June 30, 1985	51
Terbufos	Feb. 1985	5.1
Thiodicarb	Feb. 27, 1984	18
Thiram	June 30, 1984	29
TPTH	Sept. 30, 1984	39
Trichlorfon	June 30, 1984	30
Trimethacarb (Landrin)	Sept. 30, 1985	76
Vitamin D-3	Dec. 1, 1984	42
Wood preservatives	July 11, 1984	31

Members of the public may be placed on a mailing list to receive Pesticide Fact Sheets to be issued, by sending a name and address to Nancy Hemming at the address given above. A complete set of fact sheets issued may be ordered from the address first listed above.

Dated: February 4, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-3049 Filed 2-11-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30260; FRL-2933-5]

FMC Corp.; Applications To Register Pesticide Products

Correction

In FR Doc. 85-28696, beginning on page 49759, in the issue of Wednesday, December 4, 1985, make the following corrections:

1. Beginning on page 49759, in the third column, in items 1, 2, and 3, in the product name, "Talstar ™" should read "Talstar ™".

2. In item 1., in the sixth line, "3-3-(2-" should read "3-(2-". And in the eighth line, "methyl-1[1" should read "methyl-[1".

3. In item 2., in the fifth line, "(2-chloro-3" should read "3(2-chloro-3".

4. On page 49760, in the first column, item 3., in the fifth line, "3-2-chloro" should read "3-(2-chloro".

BILLING CODE 1505-01-M

[OPP-30263; FRL-2966-4]

Application To Register a Pesticide Product; ICI Americas, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to conditionally register a pesticide product containing an active ingredient involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by March 14, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP-30263] and the file number (10182-TR) to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 15, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM#2, Attn: PM 15, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: George LaRocca, PM 15, (703-557-2400).

SUPPLEMENTARY INFORMATION: ICI Americas, Inc., Agricultural Chemicals Div., Wilmington, DE 19897, has submitted an application to EPA to conditionally register the pesticide product Demon TM WP Insecticide, an insecticide, EPA File Symbol 10182-TR, containing the active ingredient cypermethrin (±) alpha=cyano-(3-phenoxyphenyl)methyl ±-*cis, trans*-3-(2,2-dichloroethenyl)-2,2=dimethylcyclopropanecarboxylate at 40 percent, pursuant the provision of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use, to include in its presently registered use, new use in households to control cockroaches in cracks and crevices. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: January 28, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-2683 Filed 2-11-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180687]; FRL-2969-1]

Pesticides; Emergency Exemptions for Sethoxydim, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pest in the six States listed below, and the U.S. Department of Agriculture. Also listed are 42 quarantine exemptions granted to the U.S. Department of Agriculture. These exemptions, issued during the months of November and December, and two for the month of October, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific and quarantine exemption for the name of the contact person. The following information applies to all contact people:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Commission of Agriculture and Horticulture for the use of sethoxydim on dry bulb onions to control grassy weeds; December 23, 1985 to May 31, 1986. (Stan Austin)

2. Arkansas State Plant Board for the use of dicamba on land to be used for cotton production to control redvine; October 22, 1985 to November 30, 1985. (Libby Pemberton)

3. Arkansas State Plant Board for the use of temephos in the Sulphur River to control the Buffalo gnat; December 3, 1985 to November 1, 1986. (Jack E. Housenger)

4. California Department of Food and Agriculture for the use of sethoxydim on

dry bulb onions to control grassy weeds; November 25, 1985 to April 30, 1986. (Gene Asbury)

5. California Department of Food and Agriculture for the use of fenvalerate on cherry trees (post harvest) to control leaf hoppers; October 11, 1985 to November 30, 1985. California initiated a crisis exemption for this use. (Stan Austin)

6. California Department of Food and Agriculture for the use of prometryn on parsley to control weeds; December 6, 1985 to June 1, 1986. (Jim Tompkins)

7. Florida Department of Agriculture and Consumer Services for the use of benomyl on potatoes to control stalk rot or white mold in Dade County; December 16, 1985 to April 30, 1986. (Gene Asbury)

8. Hawaii Department of Agriculture for the use of avermectin B^{1} on ornamental flowers to control celery leafminers (*Liriomyza trifolic*). A notice of receipt of the request for a specific exemption for this use was published in the **Federal Register** of November 13, 1985 (50 FR 46825). One comment was received and was taken into consideration in the decision to grant the request; December 12, 1985 to December 11, 1986. (Libby Pemberton)

9. Texas Department of Agriculture for the use of permethrin on collards, mustard greens, turnip greens, and kale to control cabbage loopers; December 23, 1985 to March 31, 1986. (Don Stubbs)

10. Texas Department of Agriculture for the use of temephos in the Sulphur River to control the Buffalo gnat; December 3, 1985 to November 1, 1986. (Jack E. Housenger)

11. U.S. Department of Agriculture for the use of naled baits to control the oriental fruit fly; December 4, 1985 to December 3, 1986. (Libby Pemberton)

12. U.S. Department of Agriculture for the use of methyl bromide on export logs for control of the oak wilt fungus; November 19, 1985 to November 18, 1986. (Libby Pemberton)

The following quarantine exemptions were granted to the U.S. Department of Agriculture (APHIS) for the use of various chemicals on various non-food items to control quarantinable pests around the country on November 19, 1985, and will be in effect until November 18, 1986. (Libby Pemberton)

1. Ethylene oxide-carbon dioxide on miscellaneous cargo, to control quarantinably important snails and slugs, in ship holds under tarpaulins or in other temporary enclosures. EPA completed a rebuttable presumtion against registration (RPAR) on this chemical; the final determination was published in the **Federal Register** of January 27, 1978 (43 FR 3801).

2. Hydrogen cyanide on cargo which is adversely affected when treated with methyl bromide, to control cotton insects, khapra beetles or snails, in ship holds under tarpaulins or in other temporary enclosures.

3. Methyl bromide on nonfood/ nonfeed cargo, to control khapra beetles, woodboring insects, snails, and other quarantinable plant pests, in ship holds under tarpaulins or in other temporary enclosures.

4. Methyl bromide on machinery, plant, and nonplant materials to control golden nematodes, witchweed, cotton insects, and gypsy moths, under tarpaulins, in fields at ports of entry.

5. Aluminum phosphide to fumigate stored nonfood products in ships holds under tarpaulins or in other temporary enclosures.

6. Formaldehyde as a plant pest treatment to fumigate rice straw and containers.

7. Formaldehyde may be used as a plant pest treatment for bags and baggings, and rice hulls.

8. G–1707–Pyrethrum extract and synergist to control fruit flies and other soft-bodied insects in aircraft and cargo containers.

9. d–Phenothrin to control fruit flies and other soft-bodied insects in aircraft and cargo containers.

10. Malathion to control the infestation of quarantine insects on ship decks, bulkheads, pier areas or other storage facilities.

11. Malthion-carbaryl dip to treat orchids and other plants found not tolerant to methyl bromide fumigation.

12. Bordeaux mixture as a foliar spray on plants to reduce surface diseases at inspection stations and port areas around the country.

13. Carbon disulfide—carbon tetrachloride mixture to treat seeds for propagation at inspection stations.

14. Sodium hydrochlorite to treat propagative plant parts and plants materials at inspection stations.

15. Captan to treat seeds and other propagative plant parts for plant diseases at designated inspection stations. EPA completed a rebuttable presumption against registration (RPAR) on this chemical; the final determination was published in the **Federal Register** of June 21, 1985 (50 FR 25884).

16. Cooper sulfate to treat some seeds and plant material at designated inspection stations for issuance of departmental permits.

17. Ferbam as a spray to control various plant diseases on propagative plant parts.

18. Zineb to treat certain plants or plant parts infested with diseases at designated inspection stations for issuance of departmental permits.

19. Propoxur for use in insect traps.

20. Dichlorvos (DDVP) for use in gypsy moth and khapra beetle traps.

21. Naled for use in fruit fly traps.

22. Ethyl for use in black light traps.

23. Triyluralin to control witchweed on established lawns and turf.

24. Methyl bromide to kill witchweed seed in soil on fallow fields and small plots of land released from quarantine.

25. Sodium carbonate to be applied to surfaces potentially exposed to certain animal diseases in semen containers.

26. Sodium carbonate to be applied to aircraft surfaces potentially exposed to certain animal diseases.

27. Sodium hypochlorite to be applied to aircraft surfaces potentially exposed to certain animal diseases.

28. Sodium hydroxide to be applied to exposed surfaces, animal product containers, hay and straw.

29. Resmethrin aerosol may be applied to control fruit flies and other soft-bodied insects in aircraft and cargo container when people are present.

30. Resmethrin may be applied as a micronized dust in aircraft containers or other temporary enclosures when the airplane crew, passengers, or animals are not present.

31. 8–Hydroxyquinoline sulfate-aqueous solution to treat plant diseases in citrus and othe rutaceous seeds at inspection stations.

32. Nicotine sulfate to control aphids on a wide variety of propagative plant materials while in quarantine at inspection stations.

33. d–Phenothrin to control mealy bugs and aphids on a wide variety of propagative plants while in quarantine.

34. Cyhexatin to control spider mites on a variety of propagative plants while in quarantine.

35. Dienochlor to control spider mites on a variety of propagative plants while in quarantine.

The following quarantine exemptions were granted to the U.S. Department of Agriculture (APHIS) to control citrus canker in Florida on November 29, 1985, and will be in effect until November 29, 1986. (Jack E. Housenger):

1. Diquat dibromide to defoliate citrus trees around confirmed citrus canker-infested areas.

2. Sodium hypochlorite on citrus for export.

3. Quaternary ammonium compounds on field equipment, clothing, shoes, vehicles, tires, and any other equipment taken into citrus canker-infested areas.

. A quarantine exemption was granted to the U.S. Department of Agriculture, effective from November 5,

1985 to November 4, 1986, for the use of methyl bromide to control quarantinable pests on various food/feed commodities throughout the U.S. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: February 3, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 86-3046 Filed 2-11-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50649; FRL-2968-8]

Issuance of Experimental Use Permits; Abbott Laboratories et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275-EUP-47. Issuance. Abbott Laboratories, 14th St. and Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 1,000 grams of the plant growth regulator gibberellin A_3 on lemons (post-harvest) to evaluate the susceptibility of sour rot decay of lemons during storage. A total of 10,000,000 pounds are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from November 8, 1985 to November 8, 1987. A permanent tolerance for residues of the active ingredient in or on citrus fruits has been established (40 CFR 180.224). (Robert Taylor, PM 25, Rm. 245, CM #2, (703-557-1800))

7969-EUP-18. Extension. BASF Wyandotte Corporation, 100 Cherry Hill Road, P.O. Box 181, Parsippany, NJ 07054. This experimental use permit allows the use of 1,800 gallons of the fungicide N-cyclohexyl-N-methoxy-2, 5-dimethyl-3-furancarboxamide on cotton seed to evaluate the control of various diseases. A total of 3,850 pounds of seed are involved; the program is authorized only in the States of Mississippi and Texas. The experimental use permit is effective from December 6, 1985 to July 1, 1986. (Henry Jacoby, PM 21, Rm. 227, CM #2, (703-557-1900))

464-EUP-78. Extension. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 53.5 pounds of the herbicide methyl 2-(4-[(3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy) phenoxy)propanoate on fallow land and soybeans to evaluate the control of annual and perennial grasses. A total of 214 acres are involved; the program is authorized only in the States of Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Nebraska, Tennessee, and Wisconsin. The experimental use permit is effective from April 17, 1986 to April 17, 1987. This permit is issued with the limitation that all crops are destroyed or used for research purposes only and that fallow land will remain fallow during 1986. (Richard Mountfort, PM 23, Rm. 253, CM #2, (703-557-1830))

352-EUP-129. Issuance. E.I. duPont de Nemours and Co., Inc., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 37.5 pounds of the herbicide methyl 2-[[[[[(4, 6-dimethoxypyri-midin-2-yl)amion]carbonyl]amino] sulfonyl]methyl]benzoate on rice to evaluate the control of weeds. A total of 600 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from November 1, 1985 to February 1, 1988. A temporary tolerance for residues of the active ingredient in or on rice has been established. (Richard Mountfort, PM 23, Rm. 237, CM #2, (703-557-1830))

352-EUP-132. Issuance. E.I. duPont de Nemours and Co., Inc., Walkers' Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 500 pounds of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(ethylthio)-1,2,4-triazin-5(4H)-one on wheat to evalute the control of various weeds. A total of 500 acres are involved; the program is authorized only in the States of Colorado, Idaho, Kansas, Montana, Nebraska, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. The experimental use permit is effective from December 30, 1985 to December 30, 1986. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 253, CM #2, (703-557-1830))

279-EUP-102. Issuance. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 307 pounds of the insecticide/nematicide O-ethyl S,S,-di-*sec*-butyl phosphorodithioate on field corn to evaluate the control of corn rootworms, cutworms, wineworms, and nematodes. A total of 153.5 acres are involved; the program is authorized in the States of Arizona, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from October 31, 1985 to October 31, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (William Miller, PM 16, Rm. 211, CM #2, (703-557-2600))

618-EUP-11. Issuance. Merck and Company, Inc., P.O. Box 2000, Rahway, NJ 07065-0914. This experimental use permit allows the use of 222 pounds of the fungicide thiabendazole on stored corn grain to evaluate the control of various fungal diseases. A total of 260,000 bushels are involved; the program is authorized only in the States of Iowa, Illinois, Indiana, and Michigan. The experimental use permit is effective from October 28, 1985 to August 31, 1987. This permit is issued with the limitation that all treated corn will be used only for animal feed. (Henry Jacoby, PM 25, Rm. 245, CM #2, (703-557-1800))

3125-EUP-195. Issuance. Mobay Chemical Corporation, Agricultural Chemicals Division, P.O. Box 4913, Kansas City, MO 64120. This experimental use permit allows the use of 1,250 pounds of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(ethylthio)-1,2-4-triazin-5(4*H*)-one on wheat to evaluate the control of weeds. A total of 1,000 acres are involved; the program is authorized only in the States of Arkansas, Colorado, Idaho, Kansas, Louisiana, Mississippi, Montana, Nebraska, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, and Washington. The experimental use permit is effective from December 12, 1985 to December 12, 1986. This experimental use permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. CM #2, (703-557-1830))

45639-EUP-28. Extension. NOR-AM Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 375 pounds of the herbicide diethatyl-ethyl on cotton to evaluate the control of weeds. A total of 125 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from November 5, 1985 to November 5, 1986. A temporary tolerance for residues of the active ingredient in or on cotton has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703-557-1830))

476-EUP-112. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. This experimental use permit allows the use of 150 pounds of the herbicide 3-chloro-4-(chloromethyl)-1-[3-(trifluoromethyl]phenyl)-2-pyrrolidinone on grain sorghum to evaluate the control of annual grasses and broadleaf weeds. A total of 200 acres are involved; the program is authorized only in the States of Alabama, Arkansas, California, Colorado, Georgia, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota, Tennessee, and Texas. The experimental use permit is effective from February 1, 1986 to February 1, 1987. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

612-EUP-2. Extension. Union Oil Company of California, 461 S. Boyleston C5, Los Angeles, CA 90017. This experimental use permit allows the use of 8,745 pounds of the nematicide sodium tetrathiocarbonate on grapes and citrus to evaluate the control of nematodes. A total of 55 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from October 11, 1985 to September 1, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Henry Jacoby, PM 21, Rm. 245, CM#2, (703-557-1900))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: February 4, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-3048 Filed 2-11-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400123; FRL-2968-9]

Interagency Testing Committee; Placement of Isopropanol in the Intent-to-Designate Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Interagency Testing Committee (ITC) decision to include isopropanol in its intent-to-designate category of chemical substances in the ITC selection process. The decision to establish this category and the ITC's rationale for so doing was published in the **Federal Register** of April 4, 1985 (50 FR 13418). Comments and information are desired before the ITC designates isopropanol for priority consideration for testing requirements.

DATE: Comments and information, identified by the document control number [OPTS-40013], should be submitted on or before March 31, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Brink, Executive Secretary, Interagency Testing Committee (TS-792), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and phone number: Rm. E-135, 401 M St., SW., Washington, DC 20460, (202-382-3820).

SUPPLEMENTARY INFORMATION: The ITC has established an "intent-to-designate" category of chemicals as part of its chemical selection process (50 FR 13418). Lists of chemicals in the intent-to-designate category are published in the **Federal Register** from time-to-time, as the need arises. The Committee cites specifically what additional information it needs on each chemical. The completeness and quality of the submitted information or data also plays a major role in the Committee's considerations. At the end of the submission period, the Committee will re-evaluate the chemical(s) in this category and make a final decision regarding their disposition.

The TSCA Interagency Testing Committee (ITC) intends to designate isopropanol (CAS No. 67-63-0) for certain health effects testing in a future report to the EPA Administrator. Those health effects are (1) genotoxicity, (2) carcinogenicity, (3) reproductive and developmental effects. Annual U.S. production of isopropanol is in excess of one billion pounds. There appears to be significant workplace exposure to isopropanol and the ITC has found only fragmentary and inconclusive information on the toxicological endpoints of concern with respect to isopropanol per se, uncontaminated with isopropyl sulfate.

If additional information is received by March 31, 1986, the Committee will determine whether the new information would justify modifying its intention to designate.

The information submitted will become part of the public record of the ITC review process unless it is clearly designated as Confidential Business Information (CBI). Submitters should separate CBI from other information and mark such information clearly as "TSCA CBI." It will be treated in accordance with procedures outlined in the "TSCA Confidential Business Information Security Manual."

Information or data are being solicited from industry and the public on isopropanol. Information is requested by March 31, 1986.

Dated: January 27, 1986.

Rodger L. Tatken,

Chairman, TSCA Interagency Testing Committee.

[FR Doc. 86-3047 Filed 2-11-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Common Carrier Services; Access Charge and Divestiture Related Tariffs; Investigation; Memorandum Opinion and Order

In the matter of Investigation of Special Access Tariffs of Local Exchange Carriers (CC Docket No. 85-166, Phase II, Part 1).

Adopted: January 16, 1986.

Released: January 17, 1986.

By the Chief, Common Carrier Bureau.

1. In this Order, we request information and establish a procedural schedule for our investigation of the special access rates of local exchange carriers (LECs). Special access tariff provisions have been under investigation since the original access tariffs were filed to be effective January 1, 1984. Two sets of tariffs were found unlawful. Special access tariffs were allowed to go into effect as of April 1, 1985, subject to revisions as specified in the Commission's February 19 and

March 8 Orders.[1] Those tariffs had been filed on December 3, 1984 in response to the earlier Commission investigations and Orders. Although the Commission allowed the filed tariffs to take effect, it also determined that important issues remained concerning whether the special access rates, terms, and conditions in all of the tariffs were just and reasonable. It therefore directed a further investigation of all of the special access tariffs and imposed an accounting order to facilitate refunds of unreasonably high rates. In the March 8 Order, the Commission also prescribed a one year phase-in of rates for existing circuits provided to the other common carriers (OCCs) which had been subject to the Docket 20099 Settlement Agreement [2] tariffs. Rates for these circuits would be 50 percent of the special access rates for six months, until October 1, 1985, and 75 percent of those rates for the next six months, from October 1, 1985 until April 1, 1986.

2. On May 24, 1985, the Common Carrier Bureau released an Order [3] designating issues in Phase I of the Commission's investigation of the special access tariffs, as they become effective April 1, 1985. In Phase I the Commission examined a range of issues involving matters such as rate structures and methodologies. Phase II of our investigation, concerning the reasonableness of rate levels was delayed to allow a significant accumulation of actual operating experience as evidence to determine whether the special access rates proved to be reasonable in fact. The LECs proposed revised special access rates as part of their July 2, 1985 annual access tariff filings. Those rates, as reduced in some cases, were generally allowed to become effective on October 1, 1985, and were included in this investigation subject to the same accounting order.[4]

3. Complete actual data for the period during which the initial special access rates were in effect, generally from April 1 through September 30, 1985, should now be available. Accordingly, in the present Order we are initiating the investigation of rate levels as Phase II of CC Docket No. 85–166. Carriers and other entities which filed access tariffs with special access rates are directed to submit their direct cases with respect to the justness and reasonableness of all special access rates.[5] In addition, we are also directing the carriers to submit, prior to their direct cases, information concerning their costs, revenues, and returns during the April through September period. To facilitate analysis by the Commission and interested persons, this information is to be submitted by all carriers in a consistent format, both in printed form and as computer diskettes. The contents and format of this information requirement are contained in the Appendix to this Order.

4. In fashioning this data submission requirement, we sought to gather necessary information relevant to determining the reasonableness of the rates, by use of data generally available to the LEC's which can be provided without the imposition of unreasonable burdens. To accomplish this purpose we have consulted informally with both customers and providers of special access services. Specific features of the requested data require further explanation:

A. *Costs.* The costs for interstate special access are derived initially from the separations process. The information request seeks to include all separations data actually used for determining the interstate special access revenue requirement. We have not required, at least as part of this initial requirement, details of sub-accounts which, we believe, are not used in the rate development process. The definitions of the required line items as used by the Bell Operating Companies are also attached[6]

B. *Frequency of data.* The information request concerns the entire period within which the initial special access rates were in effect. The most accurate data based for this evaluation would be monthly cost and revenue data for the entire period. However, monthly cost data for the entire period would be voluminous and costly to compile. It is also reasonable to expect that separations-based investment data would not change significantly during the period in question. Although we would still prefer complete data, we will accept separations cost data for the single month of September 1985 upon two conditions. First, the carrier should present data supporting the fact that the underlying investment categories have not fluctuated substantially and that the sample month data is representative of the period. Table INV ANL in the Appendix requests information relevant to this point. To the extent that the LEC's seek to rely on the September 1985 data in their direct cases they should provide any further information needed to support the use of this data. Second, because the eventual purpose of this investigation is to determine whether refunds should be granted and, if so, their amount, the carrier should stipulate that the data for the sample month are an adequate basis for determining reasonable special access rates for the entire period under consideration for the purposes of calculating the carrier's liability for refunds. If it believes some adjustment is necessary to extrapolate to the entire period, that adjustment should be specified, explained, and justified.

C. *Investigation Request Period.* Most initial special access rates became effective on April 1, 1985, and were replaced by revised rates on October 1, 1985. In some cases, however, the initial rates became effective later than April 1, or were revised during the period, or remained in effect after October 1. The rates covered by the information requirement are the special access rates in the access tariffs from April 1 through September 30, 1985, including any revisions during that period. For consistency, we also include any period from October 1 until the date revised tariffs became effective in the case of deferred special access rates. Carriers should report all rate revisions and deferrals (as specified in the information submission requirement) and the data submitted should include this entire period. The data should not include the period before the initial special access tariffs became effective if this occurred after April 1, 1985. We have limited the information request to the April 1 through September 30 period because it represents a specific fixed period during which, for the most part, each carrier maintained a single set of rates. Analysis of actual results for this distinct period should allow a detemination of whether these particular rates were unreasonable and thus whether refunds should be ordered.

D. *NECA.* During the April 1 through September 30 period, about half of the Bell Operating Companies (BOCs) were members of the National Exchange Carrier Association (NECA) traffic

[1] Investigation of Access and Divestitute Related Tariffs, CC Docket No. 83–1145, Phase I and Phase II, Part 1, FCC 85–70 and FCC 85–100, released February 19, 1985 (50 FR 12637; March 29, 1985) and March 8, 1985 (50 FR 11440; March 21, 1985), respectively.

[2] See AT&T, 47 FCC 2d 660 (1974) (Order initiating Docket No. 20099 investigation); AT&T, 52 FCC 2d 7217 (1975) (Order accepting settlement of docket); *aff'd sub nom.* Carpenter v. F.C.C., 539 F. 2d 242 (D.C. Cir. 1976).

[3] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85–166, CC 4726, released May 24, 1985. *(Designation Order.)*

[4] Annual 1985 Access Tariff Filings, CC 7401, released Sep tember 30, 1985.

[5] For reasons set out later in this Order, the initial round of proceedings, Part 1, will address only the reasonableness of the rates charged by the various Bell Operating Companies.

[6] A more complete list of the categories, apprortionments, and definitions used by the BOCs is on file in the Commission's Tariff Reference Room, Room 513, 1919 M St. NW., Washington, DC.

sensitive (TS) pool. NECA administered this pool and filed rates based upon the average costs of all TS pool members for special access and other rate elements. Each pool member charged these averaged rates and shared the resulting revenues. Thus, cost and revenues for pool members are necessary to evaluate the reasonableness of the NECA rates, but will not be individually meaningfull. For this reason, we have not requested certain data items from NECA pool members. In addition, we have established a staggered schedule of submissions. Pool members will submit their individual data to the Commission and to NECA at the same time. NECA itself will then be allowed an additional week to compile this information and present it in a form relevant to assessing results for special access as part of the NECA TS pool.

5. In addition to these specific points we wish to emphasize the role of the information submission requirements in the proceeding as a whole. The responsiblity for establishing the justness and reasonableness of these rates and the burden of proof lie with the filing carriers. *See* Section 204(a) of the Communications Act, 47 U.S.C. § 204(a). To the extent that additional information is necessary to explain and justify the rates, the carriers should submit such information as part of their direct cases. In particular, the information required to be submitted here does not address the reasonableness of the methodology used to allocate costs and determine rates for individual special access rate elements or services. Each filing carrier should as part of its direct case explain its methodologies and present relevant justification for the reasonableness of the rates which result.

This obligation extends to the post-October 1 rates. Those are included in this phase of the Docket 85–166 investigation, but only a limited amount of actual data on revenues and returns is currently available. Substantial changes in pool participation and tariff provisions and rates also affects comparisons before and after October 1. For these reasons we are not requiring data for periods after October 1 in the current information request. Carriers are directed nonetheless to present actual revenue and return data for October and November 1985 as part of their direct cases, and to present updated justification for the reasonableness of the post-October 1 rates.

7. Aside from this specific obligation, it may prove necessary or desirable (at a later point in this investigation) to require the submission of additional information from individual carriers or carriers generally. One specific instance involves program audio rates. We are preparing an information request to examine the reasonableness of the major rate changes experienced by this service in light of the complete actual data for the period involved which should now be available. Further information requests will also be considered. It may also be necessary or desirable to adopt additional procedural mechanisms to gather and test relevant information. It has been proposed, for example, that we select a bellwether carrier and refer specific issues to an administrative law judge for the taking of testimony.[7]

8. It appears to us most useful as an initial step to evaluate the basic, actual data included in this information submisson. The results generated by this submission should provide a useful foundation for determining any further information and proceedings which may be needed. A party may submit requests for such information and procedures, with appropriate justification, as part of the party's case in this proceeding.

9. In its *March 8 Order* the Commission also prescribed a transition plan for bringing the special access rates more closely in line with costs. The purpose of the transition plan was to ease the expected rate shock that OCCs would experience from the sudden shift from low OCC rates to higher special access rates for facilities obtained from the BOCs. This rate shock would have resulted from the BOCs' failure to revise the OCC rates in conformity with the Docket No. 20099 Settlement Agreement as accepted by the Commission in 1975.[8] The failure to update these rates caused the OCC rates to remain artificially lower than comparable rates for other customers. It was originally our intent to include all special access rates in this phase of our investigation. Recently, however, the Congress has urged the Commission to examine the reasonableness of special access rate levels before an increase in special access rates for OCCs under the last step in the Commission's transition plan (scheduled for April 1).[9] This last step in the transition would increase rates for channels formerly obtained under the Docket 20099 Settlement Agreement from the current level of 75 percent of the tariffed rate to 100 percent. This final step in the transition is not associated with the progress of this investigation and OCCs along with other customers are protected by our continuing accounting order and by the refund process in the event special access rate levels prove excessive. Nevertheless, we wish to make every effort to address the concern expressed by the Congress.

10. For this reason, we are bifurcating this phase of the investigation. In Part 1, as represented in this Order, we will examine only the special access rates of carriers subject to the April 1 transition step, *i.e.*, the BOCs. This will allow the Commission and interested parties to focus attention initially on the rates scheduled to increase, and defer analysis of rates of the numerous carriers that are not affected by the transition from Docket 20099 rates. Moreover, because the BOCs provide over 90 percent of all special access facilities and use relatively consistent methodologies and rate structures, an investigation of these rates will be of particular importance to customers and more manageable than an investigation of the rates filed by the many smaller, more diverse carriers. We accordingly are deferring the filing of information and direct cases by non-BOC providers of special access until further order, while we proceed with our investigation of the BOCs. NECA should compile the information requirement submissions of BOCs who were members of the NECA pool during the period under investigation and report results for the total TS pool and the special access portion. NECA should also summarize corresponding data for all non-BOC TS pool members. Because the separations cost data are apparently not meaningful on an aggregate basis NECA should summarize the cost data of the BOC pool members but need not aggregate the data.

11. In addition, the BOCs are directed to present in their direct cases information and data demonstrating the projected effect of the April 1 transition step upon their current special access revenues and returns. This information should include an update of projected returns based upon the April through September 1985 results and projected effects of the October and April OCC transition steps. The BOCs should also project expected results based on October and November 1985 actual results.[10]

[7] *See* Annual 1985 Access Charge Tariff Filings—Phase II, Petition for Rejection or Suspension and Investigation filed by AD Hoc Telecommunications Users Committee at 32 (Aug. 22, 1985).

[8] *See* AT&T, 52 FCC 2d 727 (1975) (Order accepting settlement).

[9] *See* H.R. Rep. No. 99–414 (Conference Report on H.R. 2965) 99th Cong., 1st Sess. 38 (1985).

[10] BOCs formerly in the NECA TS pool that do not choose to file individual direct cases should nevertheless submit this material.

12. All BOCs are directed to file the information specified in the attached data submission requirement no later than February 7, 1986. The BOCs (other than those BOCs electing to file their direct cases pursuant to paragraph 13) shall file their direct cases no later than February 14, 1986. BOCs who were members of the NECA TS pool during the April 1 through September 30, 1985 period should also submit the requested data to NECA no later than that date. NECA should submit the total data for the special acess portion of the TS pool no later than February 14, 1986.

13. NECA shall submit its direct case no later than February 21, 1986. BOCs who were members of the NECA TS pool may, if they wish, also submit direct cases no later than February 21, 1986. Opposition cases must be submitted no later than March 7, 1986. Rebuttal cases from the BOCs ad NECA must be submitted no later than March 14, 1986.

14. As we noted in the *Designation Order* [11], the investigation in this docket will be conducted as a notice and comment proceeding. The initial round of filings should be captioned "Direct Cases." The pleadings opposing the direct cases should be captioned "Opposition to Direct Case" or "Comments on Direct Case," not as petitions to suspend or reject, and the rebuttals of the BOCs and NECA to the oppositions and comment should be captioned "Rebuttals." In the event of any inconsistency, the specific procedures set out in this Order apply rather than the Commission's Rules.

15. Formal submissions should include in the heading the title of the proceeding and docket number. The pleadings should also reference the specific tariff or tariffs to which the pleading is directed, *e.g.*:

In the matter of
Investigation of Special Access Tariffs of Local Exchange Carriers; CC Docket No. 85–166, Phase II, Part 1
Local Telephone Co., Inc. Tariff F.C.C. No. XXX; Transmittal No. XXX.

16. An original and seven copies of the information submission and all pleadings shall be filed with the Secretary of the Commission. Two copies of the data filed in compliance with the information request shall allso be filed with the Tariff Division in the form of IBM PC-compatible diskettes. In addition, one copy of each pleading and diskette shall be delivered to the Commission's commercial firm for copying, International Transcription Services, Inc., (ITS) at its office in Room 246, 1919 M St. NW., Washington, DC. Parties should also serve copies on the carriers or organizations whose tariffs are specifically addressed in the pleadings and therefore listed in the heading. Because we expect a large number of filings dealing in many cases with individual tariffs, we believe that service on all persons interested in the outcome of this proceeding would be burdensome and unnecessary. Interested persons may obtain copies of the pleadings and information from ITS or may copy the pleadings maintained in the Commission's docket library in Room 239, 1919 M Street NW., Washington, DC.

17. Members of the general public who wish to express their views in an informal manner on the tariffs included in this investigation may do so by submitting one copy of their comments. There are no requirements as to form for such comments except that the docket number should be specified in the heading. Informal comments should be addressed to the Secretary, Federal Communications Commission, Washington, DC 20554.

18. *EX parte* contacts (*i.e.*, written or oral communications with a Commissioner or Commission staff members which address the merits of a proceeding, both procedural and substantive) are permitted in this proceeding until a public notice of scheduled Commission consideration of a final order or a final order itself is issued. Written *ex parte* contacts must be filed with the Secretary for inclusion in the public file. A written summary of oral *ex parte* presentations must be served on the Secretary and the Commission officials receiving each presentation. For other requirements, see generally § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

Note.—The Appendix of this order, which contains forms, definitions, and tables, will not be printed herein, due to the ongoing effort to minimize publishing costs. Complete copies of this order may be obtained from International Transcription Service, 1919 M St., Washington, DC 20554, Tel. No.: (202) 857–300.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86–2282 Filed 2–11–86; 8:45 am]

BILLING CODE 6712-01-M

[11] *See Designation order* at para. 25–29.

National Industry Advisory Committee, Radio Communications Subcommittee and Common Carrier Subcommittee; Meeting

February 7, 1986.

Pursuant to the provisions of Pub. L. 92–463, announcement is made of a public meeting of the Radio Communications Subcommittee and the Common Carrier Subcommittee of the National Industry Advisory Committee (NIAC) to be held Tuesday, February 25, 1986. The meeting will be held at 10:00 A.M. in the Federal Communications Commission (FCC) meeting room 856, 1919 M Street, NW., Washington, DC.

Agenda

1. Welcome and remarks.
2. Review of past NIAC and government actions pertaining to the use of private radio resources during emergencies.
3. Briefings on the Private Radio and Common Carrier industries.
4. Discuss the administrative process for pursuing the use of private radio resources to help restore carrier systems during emergencies.
5. Present additional questions that need to be addressed by NIAC.
6. Old/New business: Adjournment.

Any member of the public may attend or file a written statement with the subcommittees involved either before or after the meeting. Anyone wishing to make an oral statement must consult with the subcommittees involved prior to the meeting. Those desiring additional information about the meeting may contact the NIAC Executive Secretariat, Claudette Pride, on (202) 632–3906.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–3009 Filed 2–11–86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W–6]

Radio Broadcasting; Window for the Filing of FM Broadcast Applications

Released: February 5, 1986.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed on the attached appendix may be submitted for filing during the period beginning February 14, 1986 and ending March 17, 1986 inclusive. Selection of a permittee for a group of acceptable applicants will be by the Comparative Hearings process.

Appendix

	CHANNEL—282B1
Casey	IL

CHANNEL—286A	
Kearny	AZ
Century	FL
Sac City	IA
Harlan	KY
Lancaster	KY
Shepherdsville	KY
Great Barrington	MA
Lakeville	MN
Tracy	MN
Lindsay	OK
Johnsonville	SC
Robstown	TX
Bridgewater	VA

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-3017 Filed 2-11-86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1565]

Actions in Rulemaking Proceedings

February 5, 1986.

The following listings of petitions for reconsideration, applications for review, motions for stay and petitions deny filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions must be filed within 15 dasys after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Petitions for Reconsideration of Actions in Rulemaking Proceedings

Subject: Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments. (MM Docket No. 84-231)

Filed by

Timothy K. Brady for Murray Communications on 11-29-85. (Colonial Heights, Tennessee)

Lauren A. Colby, Attorney for Lowery Broadcasting Co., on 11-29-85. (Hamburg, Arkansas & Ruston, Louisiana)

Robert W. Healy & Ronald D. Maines, Attorneys for Marine Broadcasting Corporation on 12-9-85. (Jacksonville, North Carolina)

David D. Oxenford for North Country Communications, Inc. on 12-9-85. (Montpelier, Vermont)

Randolph L. Johnston on 12-17-85. (Madera, California)

Glenn B. Hammond, Attorney for LCH Broadcasting Group, Inc., on 12-17-85. (Semora, North Carolina)

James K. Edmundson, Attorney for Roxboro Broadcasting Company on 12-18-85. (Semora, North Carolina)

William M. Barnard & Mark Van Bergh, Attorneys for Radio Brazos, Inc., on 12-18-85. (College Station, Texas)

Matthew H. McCormick, Attorney for Triple H Broadcasting, Inc., (WKYD-FM) on 12-18-85. (Pensacola, Flordia)

Ashton R. Hardy, James J. Popham & Bradford D. Carey, Attorneys for Edmond J. Muniz, d/b/a EJM Broadcasting, (WDLT-FM) on 12-18-85. (Pensacola, Florida)

Livingston County Broadcasting, Inc., on 12-18-85. (Pontiac and Spring Valley, Illinois)

John B. Kenkel, Attorney for Buford Broadcasting, Inc., on 12-19-85. (Mableton, Georgia)

Steven A. Lerman & Laura B. Humphries, Attorneys for L.M. Communications, Inc., (WCOZ-FM) on 12-19-85. (Wilmore, Kentucky)

John F. Garziglia, Attorney for Veer Broadcasting Co., Inc., (WGRK-FM) on 12-19-85.

Subject: Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments. (MM Docket No. 84-231)

Filed by

William M. Barnard & Mark Van Bergh, Attorneys for Radio Vergennes, Inc., on 12-19-85. (Vergennes, Vermont)

Dean George Hill, Attorney for Jo Anne Yates on 12-19-85. (Long Beach and Bay St. Louis, Mississippi)

Subject: Amendment of Section 73.202(b), FM Table of Allotments.

Filed by

Lauren A. Colby, Attorney for Lowery Broadcasting Co., on 12-23-85. (RM-4994, El Dorado & Hamburg, Arkansas & Ruston, Louisiana)

Brian Dodge, President for W.T.J.J. Broadcasting Inc., on 12-26-85. (MM Docket No. 85-213, RM's 4907 & 5142, Hanover, New Hampshire); & (RM-4744, Waterbury, Vermont)

Eugene T. Smith, Attorney for Coursolle Broadcasting of Wisconsin, Inc., on 12-27-85. (Waupun, Wisconsin)

Mark E. Fields, Attorney for Tiner Broadcasting Co., on 12-30-85. (Kenedy and Victoria, Texas)

Robert A. Marmet & Harold K. McCombs, Attorneys for Metro Broadcasters, Inc., on 12-30-85. (RM-4912, Daingerfield, Texas)

William M. Barnard & Mark Van Bergh, Attorneys for Radio Brazos, Inc., on 12-30-85. (College Station, Texas)

Applications for Review of Actions in Rulemaking Proceedings

Subject: Amendment of § 73.202(b), FM Table of Allotments.

Filed by

J. Geoffrey Bentley & Georgia H. Burke, Attorneys for Harbor Cities Broadcasting Corporation on 12-30-85. (RM-4914, Kewaunee, Seymour, Plymouth & Brillion, Wisconsin)

Robert W. Healy, Attorney for Marine Broadcasting Corporation on 12-30-85. (Jacksonville, North Carolina)

George R. Borsari, Jr., Attorney for Superior Broadcasting, Inc., on 1-21-86. (Sullivan & Newton, Illinois)

Motions for Stay of Actions in Rulemaking Proceedings

Subject: Amendment of § 73.202(b), FM Table of Allotments.

Filed by

Matthew H. McCormick, Attorney for Triple H Broadcasting, Inc., (WKYD-FM) on 12-16-85. (Pensacola, Florida)

Ashton R. Hardy, James J. Popham, Bradford D. Carey, Attorneys for Edmond J. Muniz, d/b/a EJM Broadcasting, (WDLT-FM) on 12-18-85. (MM Docket No. 84-231 Pensacola, Florida) & (MM Docket No. 83-493, RM-4393, Gulf Breeze, Florida)

Petition to Deny Application

Subject: Capitol Broadcasting Corporation (WKSJ-FM), Mobile, Alabama. (File No. BPH-850822IF)

Filed by

Ashton R. Hardy, James J. Popham, Bradford D. Carey, Attorneys for Edmond J. Muniz, d/b/a EJM Broadcasting, (WDLT-FM) on 12-18-85.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-3018 Filed 2-11-86; 8:45 am]

BILLING CODE 6712-01-M

A.M. Renaissance, Inc., et al.; Hearing Designation Order

In re applications of MM Docket No. 86-30:

	File No.
A.M. Renaissance, Inc., Virginia City, Nevada; Req: 1160 kHz, 5kW-LS(1kW-CH), D.	BP-821020AI
All Kountry Music Broadcasters, Virginia City, Nevada; Req: 1160 kHz, 5kW(1kW-CH), D.	BP-830502AH
Kathleen Bailey d/b/a Placerville Radio Broadcasters, Placerville, California; Req: 1180 kHz, 1kW, 25kW-LS, DA-2, U.	BP-830502AN

	File No.
December Group, KKMK Truckee, California; Has: 1400 kHz, 25kW, 1KW–LS, U, Req: 1180 kHz, 1 kW, 10kW–LS, DA–2, U.	BP–830502AQ

For Construction Permit.

Adopted: January 21, 1986.
Released: February 6, 1986.

By the Chief, Audio Services Division.

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration: (i) The above-captioned mutually exclusive applications; (ii) petitions filed by Posen Communications Company and Bonneville International Corporation seeking denial of the application of A.M. Renaissance, Inc.; (iii) a petition filed by Bonneville International Corporation to deny the application of All Kountry Music Broadcasters; and (iv) related pleadings.

2. Since the proposals of Placerville Radio Broadcasters ("Placerville") and December Group ("December") constitute major environmental actions as defined by § 1.1305 of the Commission's Rules, they are required to submit the environmental information described in § 1.1311. Both the Placerville and December environmental impact statements fail to provide a description of the facilities, sites and surrounding areas (including such information as access roads and power lines). Additionally, the Placerville statement does not discuss considerations leading to selection of the site.

3. Accordingly, Placerville and December will be required to file within 30 days of the release of this Order their amended environmental narrative statements with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

4. The engineering portions of both the A.M. Renaissance, Inc. ("Renaissance") and All Kountry Music Broadcasters ("Kountry") applications contain the following omissions: (1) Site photos and (2) coverage maps showing the 5 mV/m contours during critical hours. The former omissions must be corrected by amendments filed with the presiding Administrative Law Judge within thirty (30) days of the release of this Order. The latter omissions make it impossible to determine compliance with Section 73.24(j) and an appropriate issue will be specified.

5. Bonneville International Corporation, licensee of station KSL, Salt Lake City, Utah, filed petitions to deny the Renaissance and Kountry applications. These petitions will be considered together, as Bonneville claims that both proposals for Virginia City, Nevada would cause severe interference to KSL's 0.1 mV/m groundwave contour during critical hours, based on a 20 to 1 protection ratio. Commission studies indicate that both proposals will provide full protection to KSL's 0.1 mV/m groundwave contour during critical hours. Therefore both proposals comply with Section 73.187 of the Commission's Rules. There is no provision in the rules concerning protection to skywave interference during critical hours on the basis of a 20 to 1 interference ratio. The proper vehicle for suggesting such a fundamental reevaluation is a rulemaking proceeding, not isolated application proceedings. Accordingly, Bonneville's petitions to deny will be denied.

6. *A.M. Renaissance, Inc., application.* In its petition to deny, Posen Communications contends that Renaissance was obligated under Section 1.1311 of our Rules, but failed, to provide a narrative statement with the requisite environmental information: namely, that construction of the proposed facility would constitute a "major action" since the transmitter was to be located in the Virginia City Historic District. This issue is now moot as Renaissance has filed an amendment changing its original transmitter site. Posen's petition will be dismissed accordingly.

7. Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by Renaissance would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

8. *Placerville Radio Broadcasters application.* Placerville filed an amendment on August 8, 1983, which among other things, corrected its original application, substituting El Dorado County for Placer County as the transmitter site. However, in a later amendment filed November 14, 1983, Placer County is once again listed as the transmitter site. To remedy this inconsistency, the applicant must file an amendment indicating the correct transmitter site with the presiding Administrative Law Judge within 30 days of the release of this Order or an appropriate issue will be specified.

9. *December Group application.* Commission records indicate that on August 27, 1985, an application to assign station KKMK from December Group to AMERICOM, a California Limited Partnership, was granted. However, we have no documentation that this assignment was ever consummated and December Group remains the applicant of record here. If, in fact, the assignment was consummated, the present licensee of KKMK must amend its application to reflect the current licensee, listing all the principals, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order. The judge will evaluate the amendment and determine if further action is appropriate.

10. Applicants filing major modifications applications are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications. We have no indication that December fulfilled this requirement. To remedy this deficiency, December must fulfill the local notice requirement, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

11. Except as indicated by the issues specified below, all aplicants are qualified to construct and operate as proposed.[1] However, since the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal or combination of proposals, would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

12. Accordingly, It is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are

[1] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2 Rio de Janeiro 1981 and to bilateral and other multilateral agreements between the United States and other countries.

designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to the applications of Placerville Radio Broadcasters and December Group, which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by Sections 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by A. M. Renaissance, Inc. would constitute a hazard to air navigation.

3. To determine whether the applications of A.M. Renaissance, Inc. and All Kountry Broadcasters comply with § 73.24(j) of the Commission's Rules with respect to coverage during critical hours, and, if not, whether waiver of this provision is warranted.

4. To determine: (a) The areas and populations which would receive primary aural service from the proposals of A.M. Renaissance, Inc., All Kountry Music Broadcasters, and Placerville Radio Broadcasters and the availability of other primary service to such areas and populations; (b) the areas and populations which would gain or lose primary aural service from the proposal of December Group and the availability of other primary service to such areas and populations; and (c) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would best provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, that the Federal Aviation Administration is made a party to this proceeding.

14. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Placerville Radio Broadcasters and December Group shall submit the amended environmental narrative statements required by Section 1.1311 of the Rules to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

15. It is further ordered, that A.M. Renaissance, Inc., and All Kountry Music Broadcasters file amendments to correct the engineering deficiencies in their proposals with the presiding Administrative Law Judge within 30 days of the release of this Order.

16. It is further ordered, that the petitions to deny filed by Bonneville International Corporation are denied.

17. It is further ordered, that the petition to deny filed by Posen Communications Inc. is dismissed.

18. It is further ordered, that Placerville Radio Broadcasters file an amendment to correct the inconsistency with respect to its transmitter site with the presiding Administrative Law Judge within 30 days of the release of this Order.

19. It is further ordered, that December Group must amend its application to reflect the current licensee, listing all the principals, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order.

20. It is further ordered, that December Group comply with the local notice requirements of § 73.3580 of the Commission's Rules, if it has not already done so, and submit the required certification to the presiding Administrative Law Judge within 30 days of the release of this Order.

21. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, DC.

22. It is further ordered, that to avail themselves of an opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

23. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–3014 Filed 2–11–86; 8:45 am]

BILLING CODE 6712-01-M

First Communications Group et al.; Hearing Designation Order

In re Applications of MM Docket No. 86–33:

	File No.
First Communications Group.	BPCT–850823KH
Constance J. Wodlinger.....	BPCT–851016KH

For construction permit, Steamboat Springs, CO

Adopted: January 24, 1986.

Released: February 6, 1986.

By the Chief, Video Service Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station on Channel 24, Steamboat Springs, Colorado, and a late-filed amendment to Constance J. Wodlinger's application.[1]

2. No determination has been reached that the tower height and location proposed by Constance J. Wodlinger would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5451) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. First Communications Group has not submitted such as certification. Accordingly, the applicant will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If First Communications Group cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

4. Except as indicated by the issues specified below, the applicants are

[1] The deadline for filing amendments to the above-captioned applications was December 9, 1985. On December 23, 1985, Constance Wodlinger amended her application pursuant to § 1.65 of the Commission's Rules. The amendment, which updates her broadcast interests, will be accepted for Section 1.65 purposes only.

qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Constance J. Wodlinger, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.
2. To determine which of the proposals would, on a comparative basis, better serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

7. It is further order, that Constance J. Wodlinger's December 23, 1985, amendment is accepted for § 1.65 purposes only.

8. It is further order, that First Communications Group shall, within 20 days after the release of this Order, file with the presiding Administrative Law Judge, a site availability certification, in the form required by the Commission, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3015 Filed 2-11-86; 8:45 am]

BILLING CODE 6712-01-M

Florida Educational Television, Inc., et al.; Hearing Designation Order

In re Applications of MM Docket No. 86-47:	File No.
Florida Educational Television, Inc.	BPET-850813KE
Islamorada Educators Broadcasting, Inc.	BPET-851018KN

For Construction Permit, Islamorada, FL.

Adopted: January 31, 1986.
Released: February 6, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Florida Educational Television, Inc. (Florida Educational), and Islamorada Educators Broadcasting, Inc. (Islamorada Educators) for authority to construct a new non-commercial educational television station on Channel 18, Islamorada, Florida; and an amendment filed by each of the applicants.[1]

2. No determination has been made that the tower height and location proposed by Islamorada Educators would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a resonable possibility that the tower height and location proposed by Islamorada Educators Broadcasting, Inc., would constitute a hazard to air navigation.
2. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants.
3. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served.
4. To determine whether the factors in the record demonstrate that one applicant will provide a superior non-commercial educational broadcast service.
5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

6. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

7. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3011 Filed 2-11-86; 8:45 am]

BILLING CODE 6712-01-M

[1] Florida Educational filed an amendment on December 12, 1985, after the "B" cut-off date. Since the amendment was required by § 1.65 of the Rules in order to maintain the accuracy and completness of the application, the amendment will be accepted for § 1.65 purposes only. On December 9, 1985 (the "B" cut-off date), Islamorada Educators filed an amendment with a facsimile signature. An original page was submitted December 11, 1985. The amendment was timely filed, only the original signature was missing. Since the amendment updates the applicants legal qualifications and programming, which is required by § 1.65 of the Commission's Rules, it will be accepted for § 1.65 purposes only

Florida Keys TV et al.; Hearing Designation Order

In re Applications of MM Docket No. 86-34:

	File No.
June Gray d/b/a/ Florida Keys Tv.	BPCT-850805KE
Hispanic Keys Broadcasting Co.	BPCT-850917KF
Ernest A. Vendrell	BPCT-850918KE
Constance J. Wodlinger	BPCT-850920KE
Delmar Communications, Inc.	BPCT-850920KN.

For Construction Permit Key West, Florida.

Adopted: January 24, 1986.

Released: February 6, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of June Gray d/b/a/ Florida Keys TV (Gray), Hispanic Keys Broadcasting Corporation (Hispanic), Ernest A. Vendrell (Vendrell), Constance J. Wodlinger (Wodlinger), and Delmar Communications, Inc. (Delmar) for authority to construct a new commercial television station on Channel 3, Key West, Florida.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 47 dBu (Grade B) contour together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been made that the tower heights and locations proposed by Gray, Hispanic and Wodlinger would not each constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Except as indicated by the issues specified below, the applicants are qualfied to construct and operate as proposed. Since these applications are mututally exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, It is Ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by June Gray d/b/a/ Florida Keys TV, Hispanic Keys Broadcasting Corporation, and Constance, J. Wodlinger would each constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be be granted.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

7. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

8. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3016 Filed 2-11-86; 8:45 am]

BILLING CODE 6712-01-M

Genesee Communications, Inc., et al.; Hearing Designation Order

In re Applications of MM Docket No. 86-48:

	File No.
Genesee Communications, Inc.	BPCT-851017KI
The M and M Partnership....	BPCT-851209KG

For Construction Permit Batavia, New York.

Adopted: January 31, 1986.

Released: *February 6, 1986.*

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 51, Batavia, New York.

2. No determination has been reached that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Genesee Communications, Inc. has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and copies each to the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

4. The transmitter site proposed by M and M Partnership is 20.9 km from Station WHYB(TV), Buffalo, New York, whereas § 73.610 of the Commission's Rules requires a minimum separation of 32.18km. Therefore, M and M Partnership's site would be 11.26 km short-spaced. Accordingly, an issue will be specified to determine whether circumstances exist which would warrant a waiver of § 73.610. Since an applicant proposing a short-spaced site is required to make the threshold showing that no suitable fully-spaced site is available, the Administrative Law Judge will, in assessing those circumstances, consider the fact that the other applicant in this proceeding has specified a fully spaced site.

5. Genesee Communications, Inc. proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposal poses no interference threat to United States television stations; however, it contravenes an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes,* T.I.A.S. 2594 (1952). Accordingly, in the event of a grant of Genesee

Communications, Inc.'s application, the construction permit shall be appropriately conditioned.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine, with respect to M and M Partnership, whether circumstances exist which would warrant a waiver of § 73.610 of the Commission's Rules.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that, the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

9. It is further ordered, that Genesee Communications, Inc. shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies each to the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

10. It is further ordered, that, in the event of a grant of Genesee Communications, Inc.'s application, the construction permit shall be conditioned as follows:

Subject to the condition that operation with visual effective radiated power in excess of 1000 kw is subject to the consent of Canada.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, given notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3012 Filed 2-77-86; 8:45 am]

BILLING CODE 6712-01-M

Myrtle Beach Broadcasting Ltd. Partnership, et al.; Hearing Designation Order

In re Applications of MM Docket No. 86-40:

	File No.
Myrtle Beach Broadcasting, a Limited Partnership.	BPCT-850716KE
Coastal Carolina Broadcasting Co.	BPCT-850827KH
Coastal Carolina Limited Partnership.	BPCT-850828KH
South Carolina Broadcasters Limited Partnership.	BPCT-850828KO
Sheila Lynn McManus	BPCT-850828KW
Myrtle Communications, Inc.	BPCT-850828KP

For Construction Permit Myrtle Beach, South Carolina.

Adopted: January 28, 1986.
Released: February 6, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it (1) the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 32, Myrtle Beach, South Carolina and (2) a petition to deny filed by Coastal Carolina Limited Partnership.

2. On October 18, 1985, Coastal Carolina Limited Partnership (CCLP), one of the applicants in this proceeding, filed a "Petition to Deny" the Coastal Carolina Broadcasting Company (CCBC) application. CCBC is a competing applicant. The petition alleges that CCBC's application is patently defective and should not have been accepted for filing, on the grounds that the application does not contain a "certification of site availability" as required by FCC Form 301. Although CCBC's application cannot be granted without the required certification, the standard for acceptability is "substantially complete." Except for the missing "site certification", CCLP points out no other defect in the application. The omission is the kind of minor error that can be, and in fact was in this case, corrected by minor amendment. *See, e.g., James River Broadcasting Corp.* v. *FCC*, 399 F.2d 585 (1968). We find that CCBC's application was "substantially complete" when filed, within the meaning of § 73.3564(a). CCLP's petition, therefore, will be denied.

3. No determination has been reached that the tower height and location proposed by each of the applicants, except Myrtle Communications, Inc., would not each constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Section V-C, Item 10, FCC Form 301, requires an applicant to submit figures for the area and population within its predicted Grade B contour. Sheila McManus has not submitted these figures. Accordingly, Ms. McManus will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge.

6. Section 73.610 of the Commission's Rules requires a minimum separation of 280.8 km between a UHF station in Zone II and a UHF station or city to which the same channel (co-channel) is allocated. Ms. Manus' proposed site would be 290 km from the reference point for vacant co-channel 32, High Point, North Carolina. Ms. McManus' site would, therefore, be shortspaced 0.8 km. An issue will be specified to determine whether circumstances exist to warrant a waiver of the rule. In assessing those circumstances, the presiding Administrative Law Judge will consider the fact that the other applicants in this

proceeding have specified fully-spaced sites.

7. Myrtle Communications, Inc. has not certified its financial qualifications. McManus has given a qualified certification as to her financial qualifications. She indicates that she does not yet have the documentation to support reasonable assurance of the availability of her finances. Although the financial standards are unchanged, the Commission requires only certification as to financial qualifications. Accordingly, each applicant will be given 20 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and if appropriate, to submit a certification to the Administative Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If either applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

8. Section 73.2080(c) of the Commission's Rules requires applicants employing at least five persons full-time to file with the Commission programs designed to provide equal employment opportunities. Myrtle Communications indicates that it will employ five or more full-time employees. However, Myrtle Communications has not submitted an EEO program. Accordingly, Myrtle Communications will be required to submit a copy of its EEO program to the presiding Administrative Law Judge, within 20 days after this Order is released.

9. Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the Rules. We have no evidence that Myrtle Beach Broadcasting has published the required local notice. To remedy this deficiency, Myrtle Beach Broadcasting will be required to file a certification that it has or will comply with § 73.3580 of the Commission's Rules with the presiding Administrative Law Judge within 20 days of the release of this Order.

10. Section VII, FCC Form 301 requires an original signature of the applicant certifying that the application is true, complete and correct. Myrtle Beach Broadcasting has submitted a facsimile signature. Myrtle Beach Broadcasting will be required to submit a copy of Section VII, FCC Form 301 bearing an original signature, to the presiding Administrative Law Judge within 20 days after this Order is released.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, except Myrtle Communications, Inc., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Sheila McManus, whether the proposal is consistent with § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, that the petition to deny Coastal Carolina Broadcasting Company's application, filed by Coastal Carolina Limited Partnership, is denied.

14. It is further ordered, that Sheila McManus shall submit the area and population figures required by Item 10, Section V–C, FCC Form 301, in amendment form, to the presiding Administrative Law Judge within 20 days after this Order is released.

15. It is further ordered, that Sheila McManus and Myrtle Communications, Inc. shall each submit a financial certification in the form required by Section III, FCC Form 301, within 20 days after this Order is released or advise the Administrative Law Judge that the required certification cannot be made, as may be appropriate.

16. It is further ordered, that Myrtle Communications, Inc. shall submit a copy of its EEO program to the presiding Administrative Law Judge within 20 days after this Order is released.

17. It is further ordered, that Myrtle Beach Broadcasting shall file a certification with the presiding Administrative Law Judge within 20 days after this Order is released that it has or will comply with Section 73.3580 of the Commission's Rules.

18. It is further ordered, that Myrtle Beach Broadcasting shall submit a copy of Section VII, FCC Form 301 bearing an original signature to the presiding Administrative Law Judge within 20 days after this Order is released.

19. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

20. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

21. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–3013 Filed 2–11–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[Docket No. 86–108]

Agency Information Collection Activity Under OMB Review; Application to Establish a Branch Office

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

Dated: February 7, 1986

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension of its information collection "Application to Establish a Branch Office" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are

welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board at the address given below, where copies of the proposed information collection request and supporting documentation may be obtained: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Kathy O'Dea, Office of District Banks. Phone: (202) 377–6789.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86–3063 Filed 2–11–86; 8:45 am]

BILLING CODE 6720–01–M

[No. 86–109]

Agency Information Collection Activities Under OMB Review; Application for Permission to Change Office Location

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

Dated: February 7, 1986.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension of its information collection "Application for Permission to Change Office Location" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board at the address given below, where copies of the proposed information collection request and supporting documentation may be obtained: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Kathy O'Dea, Office of District Banks. Phone: (202) 377–6789.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86–3064 Filed 2–11–86; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 213–009835–009.

Title: Six Lines' Pacific Northwest Space Charter and Sailing Agreement.

Parties:

Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit the termination of the agreement upon written notice to appropriate governmental agencies that the parties' vessels have ceased to operate under the agreement.

Agreement No.: 204–010064–008.

Title: U.S. Gulf/Colombia Equal Access Agreement.

Parties:

Lykes Bros. Steamship Co., Inc.
Flota Mercante Grancolombiana, S.A.
Coordinated Caribbean Transport
CTMT, Inc.
New York Navigation Co., Inc.

Synopsis: The proposed amendment would add New York Navigation Co., Inc. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 213–010654–001

Title: Japan Line, Ltd. and Yamashita-Shinnihon Steamship Co., Ltd. Space Charter and Sailing Agreement in the FAR East-California Trades.

Parties:

Japan Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modiify the withdrawal provision of the agreement to permit the parties to terminate the agreement by written notice to the other parties, the Japanese Ministry of Transportation and the Commission signifying that all of their vessels have ceased to operate.

Agreement No.: 213–010655–001.

Title: Kawasaki Kisen Kaisha, Ltd. and Mitsui O.S.K. Lines, Ltd. Space Charter and Sailing Agreement in the Far East-California Trades.

Parties:

Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed amendment would modify the withdrawal provision of the agreement to permit the parties to terminate the agreement by written notice to the other parties, the Japanese Ministry of Transportation and the Commission signifying that all of their vessels have ceased to operate.

Agreement No.:213–010719–003.

Title: The EAC Lines Transpacific Service, Ltd. and Mitsui O.S. K. Lines, Ltd. Space Charter and Sailing Agreement.

Parties:

The EAC Lines Transpacific Service, Ltd.
Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed amendment would permit termination of the agreement upon written notice to the Commission that the parties' vessels have ceased to operate under the provisions of the agreement.

Agreement No.: 213–010885.

Title: The EAC Lines Transpacific Service, Ltd., Mitsui O.S.K. Lines, Ltd, and Kawasaki Kisen Kaisha, Ltd. Space Charter and Sailing Agreement in the Far East-U.S. Pacific Coast Trades.

Parties:

The EAC Lines Transpacific Service, Ltd.
Mitsui O.S.K. Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement would establish a sailing and space chartering arrangement between the

parties in the trade between U.S. Pacific Coast ports and ports in the Far East, and inland points via such ports.

By Order of the Federal Maritime Commission.

Dated: February 7, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-3097 Filed 2-11-86; 8:45 am]

BILLIING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in February

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the Alcohol, Drug Abuse, and Mental Health Advisory Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

DATE AND TIME: February 26: 1:00 p.m.; February 27: 9:00 a.m.

PLACE: Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, Maryland 20857.

STATUS OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Barbara Wagner, Room 13C15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3820.

SUPPLEMENTARY INFORMATION: This Board was established by Pub. L. 98-509 to assess the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs receiving funds under Title V and Part B of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, ADAMHA, respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

This is the first meeting of the Alcohol, Drug Abuse, and Mental Health Advisory Board and will be organizational in nature. The Administrator, Institute Directors, and other appropriate staff will present an overview of their respective organizations and summarize programs and activities relevant to the Board's Charge. There will also be presentations and discussion of issues and problems proposed for Board consideration in future sessions.

Dated: February 6, 1985.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-3007 Filed 2-11-86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 86F-0018]

Arizona Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Arizona Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dipentene/*beta*-pinene/styrene resins as tackifying agents used in the production of adhesives intended for use in food-packaging materials.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3906) has been filed on behalf of Arizona Chemical Co., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of dipentene/*beta*-pinene/styrene resins as tackifying agents used in the production of adhesives intended for use in food-packaging materials.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 CFR 16636).

Dated: January 30, 1986.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-3003 Filed 2-11-86; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. March 3 and 4, 9 a.m., Lister Hill Auditorium, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, March 3, 9 a.m. to 10 a.m.; open committee discussion, March 3, 10 a.m. to 5 p.m.; March 4, 9 a.m. to 4 p.m.; A. T. Gregoire, Center for Drugs and Biologics (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1869.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will consider the following: March 3, (1) Discussion of pediatric multivitamin formulation for infants, (2) Guidelines for essential trace element preparations for parenteral use, (3) Aluminum content in parenteral nutrition and possible toxic effects; March 4, (4) General discussion of Aldose Reductase Inhibitors.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. March 27 and 28, 9 a.m., Lister Hill Auditorium, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, March 27, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, March 27, 10 a.m. to 5:30 p.m.; March 28, 9 a.m. to 5 p.m.; Joan C.

Standaert, Center for Drugs and Biologics (HFN–110), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–443–4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss Bepridil (NDA's 19–001 and 19–002), Carter Wallace, McNeil, for use as an anti-arrhythmic agent; Lidoflazine (Angex) (NDA 18–228), Janssen R&D for use as an inti–arrhythmic agent; Terazocin (Vasocard) (NDA 19–057), Abbott Laboratories, for use in hypertension; and Nimodipine (NDA 18–869), Miles Pharmaceuticals, for use in subarachnoid hemorrhage.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion: (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees Under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 6, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–3004 Filed 2–11–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86M–0003]

Corometrics Medical Systems, Inc.; Premarket Approval of Corometrics® Neotrak™ 515 Neonatal Monitor With $tcPCO_2$ Capability

Correction

In FR Doc. 86–2111 beginning on page 4037 in the issue of Friday, January 31, 1986, make the following correction:

In the heading, a register mark ® should have followed "Corometrics" as it appears above.

BILLING CODE 1505–01–M

Public Health Service

Grants for Projects for Adolescent Family Life Demonstration Projects; Change in Request for Copies of Application

AGENCY: Office of Adolescent Pregnancy Programs (OAPP), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is to notify applicants for financial assistance under Title XX of the Public Health Service Act that they must submit only an original and two copies of their application for review.

FOR FURTHER INFORMATION CONTACT: Donald A. Underwood, Grants Management Officer, Office of Population Affairs, Room 736–E, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (202) 245–0146.

SUPPLEMENTARY INFORMATION: On January 16, 1986, the OAPP published in the **Federal Register** an annuncement soliciting competitive applications for assistance under Title XX of the Public Health Service Act.

It has now been determined that the second sentence of section 1 under Application Requirements which reads "Five additional copies would facilitate processing, but no applicant will be penalized for submitting only the three required copies" should be deleted. This action deletes that sentence. Applicants are required to submit only an original and two copies of their application.

Dated: January 31, 1986.

Jo Ann Gasper,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 86–3101 Filed 2–11–86; 8:45 am]

BILLING CODE 4160–7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Craig District Advisory Council Open Meeting

In accordance with Pub. L. 94–579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on February 26, 1986.

The meeting will begin at 10 a.m. at the Craig District Office, 455 Emerson Street, Craig, Colorado.

Agenda items will include:

1. Discussion on BLM/DOW Land Exchange
2. Report on K–T Copper Mine

3. Review public comments on James Creek Coal Preference Right Lease Application Environmental Impact Statement

The meeting will be open to the public and interested persons may make oral statements to the Council beginning at 2 p.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council, or file a written statement, should notify the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by February 20, 1986.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: February 3, 1985.

Elizabeth G. Allen,

Acting District Manager.

[FR Doc. 86-30208 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-JB-M

Use of Helicopters and Motorized Vehicles to Gather Wild Horses and Burros; Hearing

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Las Vegas District: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses and burros in FY 1986.

SUMMARY: In accordance with Pub. L. 92-195, 94-579, and 95-514, this notice sets the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses and burros from the Las Vegas District during FY 1986.

DATE: March 21, 1986, at 10:00 a.m.

Place: The hearing will take place at the Las Vegas District Office, 4765 West Vegas Drive (P.O. Box 26569), Las VEgas, Nevada 89126, telephone: (702) 388-6403.

SUPPLEMENTAL INFORMATION: Helicopters and motorized vehicles will be used to gather wild horses and burros from the Nevada Wild Horse Range and other sites within the Las Vegas District as needed during FY 1986.

This meeting will be open to the public. Interested persons may make oral statements or submit written statements. If you wish to make oral comments, please contact Ben Collins by March 14, 1986. Written comments or statements must be received by this date also. For further information, contact Ben Collins, District Manager, P.O. Box 26569, Las Vegas, Nevada 89126, telephone (702) 388-6403.

Dated: February 7, 1986.

Ben Collins,

District Manager.

[FR Doc. 86-3029 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-HC-M

Roseburg District Advisory Council; Meeting Cancellation

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act (as amended), the Roseburg District Advisory Council meeting scheduled for February 14, 1986 is cancelled. The meeting is cancelled pending appointment of new members to the Advisory Council.

Dated: February 5, 1986.

Gordon Cheniae,

Associate District Manager.

[FR Doc. 86-3030 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-33-M

Filing of Plats of Survey: Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon, on January 15, 1986.

Willamette Meridian

OR T. 30 S., R. 3 W.
WA T. 22 N., R. 10 W.

All of the above listed plats represent dependent resurveys and subdivisional lines.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 31, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-3032 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Marine Mammal Annual Report Availability

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1984 Marine Mammal Annual Report.

SUMMARY: The U.S. Fish and Wildlife Service has issued the 1984 annual report on the Service's administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1, 1984, to December 31, 1984, and was submitted to the Congress on January 7, 1986. By this notice, the public is informed that the report is available and that any interested individual may secure a copy by written request to the Service.

ADDRESS: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy W. Sowl, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Mail Code 355, Department of the Interior, Washington, DC 20240, 202/632-2202.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972 (MMPA). These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include MMPA appropriations, marine mammals in Alaska, endangered and threatened marine mammal species (specially the West Indian manatee and the sea otter in California), law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

This notice was prepared by Jeffrey L. Horwath, Wildlife Biologist, Division of Wildlife Management, Branch of Wildlife Assistance, 202/632-2202.

Dated: January 31, 1986.

Ronald E. Lambertson,

Acting Deputy Director, Fish and Wildlife Service.

[FR Doc. 86-3024 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Scientific Committee of the OCS Advisory Board will meet on March 13 and 14, 1986, in the Charlestowne Rooms 1 and 2 of the Howard Johnson Riverfront Hotel, 250 Spring Street, Charleston, South Carolina 29403. The Scientific Committee will meet during the period 9:00 a.m. to 5:00 p.m.

The agenda for the meeting will include the following subjects:

- Reports of Subcommittee Meetings
- Update on the Regional and Washington Office Environmental Studies Programs
- Discussion of the Physical Oceanography Program
- Status of the National Academy of Science Review of the Environmental Studies Program
- Discussion of the Fisheries Program
- Discussion with Representatives of Southeastern States
- Status of the Environmental Studies Budget
- Update on Technical Proposal Evaluation Committee Membership
- Report on Information Transfer Meetings of the Environmental Studies Program

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division (644), Minerals Management Service, U.S. Department of the Interior, 18th & C Streets NW., Washington, DC 20240, telephone, (202) 343–7744.

Dated January 31, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86–3077 Filed 2–11–86; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; Shell Offshore, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5205, Block 211, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 31, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Phone (504) 830–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 4, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–3021 Filed 2–11–86; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Mines

NUCLEAR REGULATORY COMMISSION

Nuclear Waste Repository Programs; Standard Operating Procedure

AGENCY: Nuclear Regulatory Commission and Bureau of Mines Interior.

ACTION: Standard Operating Procedure for BOM Interagency Agreement With DOE/NRC.

SUMMARY: The purpose of this notice is to advise interested persons that a protocol has been proposed in order to provide a standard operating procedure (SOP) for Bureau of Mines (BOM) support to the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) to avoid a possible conflict of interest in specialized activities pertinent to Nuclear Waste Repository (NWR) programs. This SOP will formally go into effect April 2, 1986. The text of the SOP is published below.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Tiktinsky, Project Manager, MS 623–SS, Division of Waste Management, NMSS, Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

A Protocol

To provide a Standard Operating Procedures (SOP) for Bureau of Mines (BOM) Support to the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) in Specialized Activities Pertinent to Nuclear Waste Repository (NWR) Programs.

Concern of Possible Conflicts of Interest

The NRC and the DOE have requested the services of the BOM relative to development and approval of Office of Civil Radioactive Waste Management

Programs (OCRWMP). Because of the unique geotechnical and mining expertise of the BOM it is in the National interest to make this expertise available to ensure state-of-the-art development of NWR technology. The three principal types of activities where the BOM expertise is essential, and the agency likely to be in need of such expertise are:

Activity	Agency
Generic research	NRC, DOE
Site specific characterization or design	DOE
Technical assessment of a specific site and/or review of a design for same.	NRC

It is generally agreed that generic research as it relates to OCRWMP and the results of such research are of general public interest. BOM, NRC, and DOE agree to meet periodically to review proposed generic research to be undertaken by the BOM under the provisions of this Agreement to ensure that no conflict of interest exists with site-specific work.

Relative to site specific activities, if the same technical specialists were to be involved in the design and the review there could be concern over possible conflicts of interest. Fortunately the BOM has the requisite skills at a number of field Research Centers and hence has the ability to designate that specific Centers be assigned responsibility to assist DOE and NCR respectively on site specific problems. This separation of activities as enumerated below will provide the necessary isolation of DOE and NRC concerns as regards site specific activities to avoid the perception of conflicts of interest.

Steps Taken To Avoid Possible Conflicts of Interest

- BOM will dedicate personnel at their Pittsburgh (PRC) and Twin Cities (TCRC) Research Centers to work on DOE's OCRWMP.
- BOM will dedicate personnel at their Denver (DRC) and Spokane (SRC) Research Centers to work on NRC's High-Level Waste Repository (HLWR) program.
- Any nondedicated Bureau employee from either PRC or TCRC can work on NRC generic, nonsite specific research.
- Any nondedicated Bureau employee from DRC or SRC can work on DOE generic, nonsite specific research.
- BOM will maintain a record of which employes are dedicated to DOE and NRC site specific programs.
- BOM, Mining Research Directorate, will not work on other interagency agreements with DOE (OCRWMP) outside of this SOP.

To Further Avoid Possible Conflicts of Interest BOM Personnel Dedicated to Work on the New Repository Program for NRC Shall Not:

- Discuss unpublished information on NRC's HLWR program with Bureau personnel working on DOE's OCRWMP: unpublished information will not include *draft documents* submitted to NRC because this output is routinely made available by NRC as public information.
- Discuss unpublished information on NRC's HLWR program with contractors working on DOE's OCRWMP at PRC and TCRC.

To Further Avoid Possible Conflicts of Interest BOM Personnel Dedicated to Work on the OCRWMP for DOE Shall Not:

- Discuss unpublished information on DOE's OCRWMP with Bureau personnel working on NRC's HLWR program: unpublished information will not include *draft documents* submitted to DOE because this output is regarded as public information.
- Discuss unpublished information on DOE's OCRWMP with contractors working on NRC's HLWR program at DRC and SRC.

Discussion of Conflicts of Interest:

BOM, Mining Research Directorate, will have two responsibilities: to monitor administrative activities pertinent to the HLWR program with NRC and the OCRWMP with DOE and to propose modification of this SOP when potential problems are perceived in order to assure no actions will take place that could be perceived as a conflict of interest. All SOP's will be listed in the **Federal Register** for public comment before implementation.

NRC and DOE will issue their tasks through BOM, Assistant Director—Mining Research, as approved by BOM, Division of Procurement, under an interagency agreement. Research center reports and recommendations will be made directly to NRC and DOE. BOM may also provide additional technical comment to DOE and NRC on work performed by the research centers.

BOM, NRC (Office of Nuclear Material Safety and Safeguards), and DOE (Office of Geologic Repositories) will be included on the distribution lists for review of all BOM *draft* documents pertinent to the Nuclear Waste Repository program.

The undersigned agree.

David R. Forshey,

Assistant Director—Mining Research.

Robert E. Browning,

Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

William J. Purcell,

Associate Director, Office of Geologic Repositories.

EFFECTIVE DATE: The SOP will formally go into effect April 2, 1986

Dated: January 14, 1986.

Robert C. Horton,

Director, Bureau of Mines.

Dated: January 31, 1986.

R.E. Browning,

Director, Division of Waste Management, Office of Nuclear Materials and Safety and Safeguards.

[FR Doc. 86–3095 Filed 2–11–86; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE INTERIOR

National Park Service; Upper Delaware National Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: February 28, 1986, 7:00 p.m..

Inclement weather reschedule date: March 14, 1986

ADDRESS: Town of Tusten, Narrowsburg, New York

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764–0159. (717) 729–7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1274 note, to encourage maximum public involment in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda

for the meeting will include discussion of the 1986 draft plan. The meeting will be open to the public. Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

Any member of the public may file with the council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles North of Narrowsburg, NY, Damascus Township, Pennsylvania.

Dated: February 3, 1986.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region

[FR Doc. 86-3081 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-254 (Final)]

Import Investigation; Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States in not materially retarded, by reason of imports from Canada of heavy-walled rectangular welded carbon steel pipes and tubes, provided for in item 610.39 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 22, 1985, following a final determination by the Department of Commerce that imports of heavy-walled rectangular welded carbon steel pipes and tubes from Canada were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 17, 1985 (50 FR 51648). The hearing was held in Washinton, DC, on January 10, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 4, 1986. The views of the Commission are contained in USITC Publication 1808 (February 1986), entitled "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada: Determination of the Commission in Investigation No. 731-TA-254 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: February 5, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-3066 Filed 2-11-86; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in section 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes dissenting.

[Investigation No. 337-TA-231]

Certain Soft Sculpture Dolls Popularly Known as "Cabbage Patch Kids"—Related Literature and Packaging; Commission Decision Not To Review Initial Determination Amending Complaint and Notice of Investigation To Add Two Respondents

AGENCY: U.S. International Commission.

ACTION: Nonreview of an initial determination (ID) joining two respondents to the investigation.

SUMMARY: Notice is hereby given that the Commission has determined not to review the ID of the presiding administrative law judge (ALJ) to join two firms as respondents in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

SUPPLEMENTARY INFORMATION: On December 17, 1985, complaints Original Appalachian Artworks, Inc., and Coleco Industries, Inc., moved (Motion 231-7) to amend the complaint and the notice of investigation by joining as respondents: (1) Calila, Inc., of Los Angeles, CA; and (2) International Panasound, Inc., of New York, NY. On January 3, 1986, the ALJ issued an ID granting the motion. No petitions for review were filed, nor were any comments from other Government agenices reviewed.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: February 3, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-3067 Filed 2-11-86; 8:45 am]

BILLING CODE 7020-02-M

[332-224]

Import Investigations; Competitive Conditions in the U.S. Tuna Industry

AGENCY: International Trade Commission.

ACTION: Institution of Investigation.

SUMMARY: The Commission instituted the investigation, No. 332-224, on January 30, 1986, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of gathering and presenting information on the competitive conditions in the U.S. tuna industry, following receipt therefor from the United States Trade Representative (USTR). USTR requested the investigation at the direction of the President.

EFFECTIVE DATE: January 30, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Ingersoll or Roger L. Corey, Jr., Agriculture, Fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, DC 20436, telephone (202) 724-0068 and 724-1759, respectively.

Background and Scope of Investigation

The USTR specifically requested the Commission to provide information in the following areas:

(A) The U.S. Industry—profile the U.S. tuna harvesting and canning industry;

(B) Foreign Industries—profile the

tuna harvesting and canning industries in Thailand, Taiwan, and Philippines, Japan, and Mexico;

(C) The U.S. Market—describe the U.S. market for raw and canned tuna and discuss levels and trends in U.S. consumption, trade, and prices for domestic and foreign tuna;

(D) Market Trade Barriers—discuss barriers to U.S. tuna exports to Thailand, Taiwan, the Philippines, Japan, Mexico, and other relevant countries;

(E) Conditions of Competition in the U.S. Market—analyze the major competitive factors affecting domestic and foreign tuna suppliers in the U.S. market, including price, quality, resource availability, marketing, transportation, government involvement, exchange rates, and the probable impact of lifting the current embargo on U.S. imports of Mexican tuna products.

The Ambassador requested that the Commission report the results of its investigation no later than 10 months after receipt of the request, or by September 27, 1986.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but not later than July 1, 1986. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: February 3, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–3065 Filed 2–11–86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Rail Carriers; Release of Waybill Data for use by A Consulting Firm

The Commission has received a request from Richard J. Barber Associates, Inc. to use the Commission's 1984 Carload Waybill Sample in connection with a petition to be filed by its client later this year for the exemption from regulation of lumber, plywood, and particleboard. Specifically, they seek way bill data for these three commodities at the five-digit STCC level in order to demonstrate that portion of each commodity that is subject to regulation as well as that portion that is currently exempt from regulation.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) certain requirements designed to protect the data's confidentiality are agreed to by the reguesting party and (2) public notice is provided so affected parties have an opportunity to object. (49 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of the Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who filed objections will be timely notified of the Director's decision.

Contact: Elaine K. Kaiser (202) 275–0907.

James H. Bayne,

Secretary.

[FR Doc. 86–3042 Filed 2–11–86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30775]

Fourteen-Eleven Corporation Exemption-Acquisition and Operation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition and operation by Fourteen-eleven Corporation of a 2.5-mile rail line between milepost 37.2 and 39.7 in Lancaster County, PA, from the requirements of prior approval under 49 U.S.C. 10901.

DATES: This exemption will be effective on February 11, 1986. Petitions to reopen must be filed by March 4, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30775 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Daniel J. Sweeney, 1750 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll-free (800) 424–5403.

Decided: January 31, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 86–3041 Filed 2–11–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-No.44)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment and Discontinuance in Neosho and Crawford Counties, KS; Notice of Findings

The Commission has issued a certificate authorizing The Atchison Topeka and Santa Fe Railway Company to: (1) Abandon its 53.26-mile line of railroad known as the Girard Subdivision of the Eastern Division, extending between milepost 0.0 at Chanute (A.U. Junction) and the end of the line at milepost 53.26 near Pittsburg

and (2) to discontinue trackage rights operations over a 2.38-mile segment of Kansas City Southern Railway Company line extending between milepost 50.27 near Frontenac and milepost 52.65 at Pittsburg, all in Neosho and Crawford Counties, KS.

The abandonment and discontinuance of service certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer. "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne

Secretary

[FR Doc. 86–3219 Filed 2–11–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; C.R. Hudgins Plating, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 29, 1986, a proposed Consent Decree in *United States* v. *C.R. Hudgins Plating, Inc.*, Civil Action No. 85–0013–L, was lodged with the United States District Court for the Western District of Virginia. The proposed Consent Decree concerns the discharge of pollutants from the defendant's electroplating facility into the City of Lynchburg's Regional Wastewater Treatment Plant. The proposed Consent Decree requires the defendant to comply immediately with the general pretreatment standards and the pretreatment standards for the electroplating point source category and to pay a penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *C.R. Hudgins Plating, Inc.*, D.J. Ref. 90–5–1–1–2209.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Virginia, Room 325, Poff Federal Building, Roanoke, Virginia 24008 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19106. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–3027 Filed 2–11–86; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Notice of Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C 3303a(a).

DATE: Comments must be received in writing on or before April 14, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service (N1–145–86–1). Records of the Livestock and Dairy Division consisting of bills of sale and a listing sheet of inventory reports covering operations of various wool handlers for 1945.

2. U.S. Department of Agriculture, Foreign Agricultural Service (N1–166–86–1). Compliance review case files consisting of the review report with related correspondence, memoranda, and exhibits.

3. U.S. Department of Agriculture, Agricultural Research Service (N1–310–86–1). Discontinued line project case

files, 1950–65, and correspondence, memoranda, outlines, and reports relating to research activities, 1942–52.

4. Department of the Air Force (N1–AFU–86–17) Engineering Data Distribution and Control Records.

5. Department of the Air Force (N1–AFU–86–20). Air National Guard reenlistment bonus records.

6. Department of the Air Force (N1–AFU–86–21). Applications for ID cards and passes.

7. Department of the Navy, Headquarters U.S. Marine Corps (N1–127–86–2). Audio tapes of radio broadcasts.

8. Department of the Navy, Naval Data Automation Command (NC1–NU–84–2). A comprehensive schedule of all aeronautical and astronautical material records.

9. Department of State, Bureau of Consular Affairs, Visa Office (N1–84–86–1). Revision of disposition standards for certain categories of visa records maintained at Foreign Service posts.

10. Department of Transportation, Federal Aviation Administration (N1–237–86–2). Revision to standards for destruction of Federal Aid Airport Program/Airport Development Aid Program and Planning Grant Program records.

11. U.S. Postal Service, Finance Group (N1–28–86–1). Records used to develop volume forecasts and rate classifications.

12. Veterans Administration, (NC1–15–85–13). Plans and specifications relating to loans.

Dated: January 24, 1986.

Claudine Weiher,

Acting Archivist of the United States.

[FR Doc. 86–3113 Filed 2–11–86; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments to Operating Licenses involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under an new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This by-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on January 29, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nucler Regulatory Commission, Washington, DC 20555.

By March 14, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party ot the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determnation will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 2.555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: April 17, 1985, as amended September 24, 1985.

Description of amendment request: This request supersedes the licensee's request dated March 20, 1984, which was noticed in the **Federal Register** on May 23, 1984 (49 FR 21825). The details of the ASME Boiler and Pressure Vessel Code Section XI Inservice Inspection (ISI) Program would be removed from the Technical Specifications by this amendment and placed in a controlled ISI Program document. The tables in the Technical Specifications listing snubbers on the Code Class 1, 2, and 3 systems would also be removed and placed in the controlled document. The revised Technical Specifications would then allow ISI changes for Code systems to be made without a subsequent Technical Specification change, which conforms to the approach use in the BWR Generic Technical Specifications in the area of ISI. However, this revision would not remove the requirements to perform ISI in accordance with Section XI and to test Code Class snubbers at required intervals.

As part of this amendment, the term "PNPS Procedure" would be substituted for references to the tables being removed. References to the 1974 Edition of the ASME Boiler and Pressure Vessel Code would be chaned to the 1980 Edition, Winter 1980 addenda. Thus, the revised Technical Specifications will require conformance with changes which were made in the latter edition of the Code, which is incorporated by reference in 10 CFR 50.55a. The bases pages for these Technical Specifications would also be revised to be consistent with the foregoing changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether license amendments are not likely to involve significant hazards considerations by providing certain examples (48 FR 14870). One example of an amendment that is considered not likely to involve a significant hazards consideration is "(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations."

The proposed amendment requires changes in the ISI program for the Pilgrim Station in keeping with changes in the ASME Boiler and Pressure Vessel Code, which is incorporated by reference in the Commission's regulations (10 CFR 50.55a). These changes in ISI requirements and shifting the tables of these requirements and snubbers from the Technical Specifications to a separate, controlled document are expected to have no effect on facility operations. This proposed amendment is, therefore, similar to example (vii) above and the staff proposes to determine that the application for this amendment does not involve a significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: John A. Zwolinski.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: December 23, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications administrative section relative to the licensee's Nuclear Safety Review and Audit Committee (NSRAC). The change would clarify the composition of NSRAC and its quorum requirements, identify specifically the types of safety evaluations to be reviewed by NSRAC, and delete a 14–day limit on the time allowed for preparation and distribution of the minutes of an NSRAC meeting.

Basis for proposed no significant hazards consideration determination: The proposed changes to the Technical Specifications are all administrative in nature and do not physically affect plant safety-related systems. Therefore, these changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a

margin of safety. Based on this finding, the staff has made an initial determination that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: John A. Zwolinski.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: December 23, 1985.

Description of amendment request: The proposed amendment would change the Pilgrim Station Technical Specification by revising Note 1 to Table 3.1.1 and Note 1 to Table 3.2.A. These note changes would impose a time limit of 6 hours on keeping an instrument channel of the Reactor Protection System or the Primary Containment Isolation System out of service during testing and calibration. A time limit does not currently exist.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether license amendments involve significant hazards considerations by providing certain examples (April 6, 1983, 48 FR 14870). The examples of actions not likely to involve a significant hazards consideration include "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement."

The proposed change would add a restriction on the amount of time an instrument channel is deliberately made inoperable without placing the trip system in the tripped condition. Because this change is similar to example (ii), the staff has made a proposed determination that the proposed amendment would involve no significant hazard considerations.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: John A. Zwolinski.

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: December 20, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Brunswick Steam Electric Plant, Unit 2. The proposed revision to TS Tables 3.3.3–1, dnd 4.3.3–1 reflects modifications to be performed on the Brunswick 2 Automatic Depressurization Systems (ADS) during the Reload 6 outage commencing December 1, 1985. These modifications will remove the high pressure trip from the ADS logic sequence and add a manual inhibit switch, thereby, eliminating the need for manual ADS actuation to ensure core coverage. A similar request was granted for Brunswick 1 by Amendment No. 87 on July 30, 1985.

Currently, the ADS activates automatically upon coincident signals of low reactor vessel water level, high drywell pressure, and initiation of a low pressure emergency core cooling pump. Modifications to be peformed on the ADS logic will remove the need for high drywell pressure indication for automatic initiation of the ADS. As a result, transients which do not directly produce a high drywell pressure signal will be encompassed by the operation of the ADS. A time delay of approximately 2 minutes after receipt of the signals allows the operator to reset the logic and prevent an unnecessary actuation

The requested TS changes remove the ADS high drywell pressure instruments and add manual inhibit switches to the ADS in TS Tables 3.3.3–1, 3.3.3–2 and 4.3.3–1, A Boiling Water Reactor Owners Group (BWROG) study of alternatives to the present ADS actuation logic identified modifications to eliminate the need for manual actuation to ensure core coverage in the event of certain accident sequences. The proposed TS change is the second option outlined in the BWROG study and is one of the two options indicated to be acceptable by NRC letter dated June 3, 1983. The resulting reduction of logic devices will increase ADS reliability and will provide additional assurance of adequate core cooling by further automating reactor pressure vessel depressurization for certain system isolations and stuck open relief valve events, while satisfying design concerns associated with anticipated transients without scram.

Basis for proposed no significant hazards consideration determination: Carolina Power & Light Company (CP&L) has determined that the requested amendment does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated bacause the modifications result in an enhancement of the ADS and does not affect performance of the intended safety function. As a result of these modifications, ADA operation will be extended to encompass accident and transient condition which do not produce a high drywell pressure signal.

2. Create the possibility of a new or different kind of accident than previously evaluated for the same stated in item 1.

3. Involve a significant reduction in the margin of safety because removing the need for manual actuation eliminates the possibility of operator error thereby ensuring core coverage. In addition, reduction of the number of logic devices increases ADS reliability.

Based on the above reasoning, CP&L has determined that the proposed changes involve no significant hazards consideration.

The staff has reviewed the CP&L determinations and finds that the amendment request meets the standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)), that is, the proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident prevously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on the above discussion the Commission proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Project Director: Daniel Muller.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 30, 1984, as supplemented December 19, 1985.

Description of amendment request: This submittal supplements the request for amendment dated May 30, 1984 which was noticed in the **Federal Register** on July 24, 1984 (49 FR 29906). The proposed Technical Specifications Revision would revise portions of Consolidated Edison's May 30, 1984 license amendment application to make the Specifications concerning Hydraulic Snubbers consistent with the Standard Technical Specifications. These changes were requested in a letter from NRC to Consolidated Edision dated October 11, 1985. The proposed changes would revise the specifications required testing of representative sample 10% of IP–2's safety related snubbers. The revision proposes to revise the specification to require that for each snubber found inoperable an additional 10% of that type of snubber shall be functionally tested. The revision also proposes to require retesting of failed snubbers and independent testing of snubbers with manufacturer or design defects.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve significant hazards considerations relates to a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specification: for example, a more stringent surveillance requirement. The proposed revision to the Technical Specification concerning snubber testing is consistent with example (ii) in that the proposed change constitutes more stringent requirements.

Therefore, the staff proposes to determine that the amendment does not involve a significant hazard determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Directorate: Steven A. Varga.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: December 12, 1985.

Description of amendment request: The amendment would modity the Technical Specifications (TS) to reflect the use of replacement control rods of the ASEA-ATOM (AA) plate design in addition to the currently used Allis-Chalmers (A–C) tube sheath design. The AA control rods for the La Crosse Boiling Water Reactor (LACBWR) have been designed to closely match the reactivity worth of the original A–C control rods and to be mechnicially compatible with all reactor components and control rod handling equipment. The amendment would also delete the requirement to go-gage control rods (i.e., gage the thickness to detect swelling), based on LACBWR and industry operating experience, and that Standard Technical Specifications for boiling water reactors do not contain a similar requirement.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has presented its determination of significant hazards considerations as follows:

10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed.

Operation of the LACBWR in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the AA control rods are mechanically compatible in all respects with the LACBWR system and have essentially the same reactivity worth, their use will not involve a significant increase in the probability or consequences of an accident previously evaluated.

For negative reactivity insertion events (scram events) the slightly greater reactivity worth of the AA control rods is considered to be beneficial. Slightly more negative reactivity will be inserted faster than with the A–C control rods. The shutdown margin will also be slightly greater with AA control rods than with the current A–C control rods.

For positive reactivity insertion events, i.e. inadvertent control rod withdrawals and control rod drop accident, the slightly greater worth of the AA control rod is also expected to have a minimal effect. The limiting anticipated transient for the LACBWR is the inadvertent control rod withdrawal at operating power. A recalculation of the limiting control rod withdrawal transient for the beginning of Fuel Cycle 9 using a conservative 3% (relative) greater control rod worth resulted in a Minimum Critical Power Ratio (MCPR) of 1.529 compared to a MCPR of 1.539 calculated for the A–C rods. The effect produced by the actual LACBWR AA control rod with a relative worth equal or slightly less than the A–C rods in the operating reactor would be completely negligible. In the LACBWR, the consequences of a control rod drop accident are greatest when the reactor is at power. The results of the probability study of the LACBWR control rod drop accident are not very sensitive to the specific worth of the control rods and the small differences between the AA and the A–C control rods would have an insignificant effect on the results.

The deletion of TS 4.2.4.10, on go-gaging control rods, will not increase the probability or consequences of an accident, since it is a surveillance requirement which LACBWR and industry experience has shown to be ineffective. The requirement to gage the control rods was originally based on the belief that the life of the rod would be limited by the pressure buildup in the B_4C tubes due to helium release from the irradiated B_4C and that the gage would detect tube swelling before tube failure. Experience has shown that absorber tubes can fail by intergranular stress corrosion cracking (IGSCC) and B_4C be lost before any swelling is detected by gaging.

The industry has concluded, after extensive research, that absorber tube failure by IGSCC and B_4C loss is more a function of B–10 depletion, and resultant B_4C swelling and change in physical characteristics, than a result of pressure buildup from helium release. Therefore, TS 4.2.4.10 is no longer necessary.

2. *Operation of the LACBWR in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.*

Since the AA control rods are mechanically compatible in all respects with the LACBWR system and have essentially the same reactivity worth as

the A–C control rods, their use will not create the possibility of a new or different kind of accident from any previously evaluated.

Elimination of the go-gaging surveillance requirement will not create the possibility of a new or different type of accident since industry experience has shown that swelling due to pressure buildup due to helium release is not the primary cause of absorber tube failure and that failures can occur prior to any swelling being detected by gaging.

3. *Operation of the LACBWR in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.*

The AA control rods for the LACBWR have been designed to closely match the reactivity worth of the original (A–C) control rods and to be mechanically compatible with all reactor components and control rod handling equipment. The AA control rod is slightly lighter (approximately 7 lbs.) than the A–C rod and therefore, scram times for the AA rod should be approximately the same as or slightly faster than for the A–C rod. Scram times for the AA control rods will be measured after installation in the reactor as required by current procedures and technical specifications.

The effect of the AA control rods on the margin of safety during an inadvertent control rod withdrawal transient, which is the limiting anticipated transient, for LACBWR, would be negligible. The limitations of other control rod related Technical Specifications such as 4.2.5.2 and 4.2.5.3 will still be conservatively met during operations with the AA control rods. Their improved design will significantly reduce the probability of IGSCC failure and resultant loss of control material (B_4C) and therefore, will increase the margin of safety.

The deletion of the go-gaging requirement will not decrease the margin of safety, since industry experience has demonstrated that pressure buildup in B_4C tubes due to helium release is not a dominant failure mode. This surveillance is not required by Standard Boiling Water Reactor (BWR) Technical Specifications. Control rod lifetime will be appropriately and prudently based on exposure histories, B–10 depletion and visual examinations as is currently the case for the rest of the U.S. BWR reactors. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

As determined by the analysis above, this proposed amendment has no significant hazards consideration.

The staff has reviewed the licensee's significant hazards consideration determination and based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for license: Roy P. Lessy, Jr.; O.S. Heistand; Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: January 2, 1986.

Description of amendment request: The licensee proposed a technical specification amendment to permit a one time extension of the 12 month ±25% snubber visual inspection period (October 4, 1985 through April 4, 1986) to the fifth refueling outage, scheduled to begin in May 1986. The refueling outage is tentatively scheduled to begin within a short period of time beyond the currently specified snubber inspection period. Without the extension, plant shutdown would be needed to perform the visual inspections, since the snubbers inside containment are considered inaccessible during power operation due to the subatmospheric containment design. There has not been an outage of sufficient duration during the present fuel cycle to perform the required visual inspections.

Basis for proposed no significant hazards consideration determination: The proposed amendment would only extend slightly the period during which the snubbers will have to be inspected. It does not change the way the snubbers are to be inspected, nor does it reduce in any way inspeciton requirements. Consequently, the amendment would not result in a significant increase in the probability of occurrence of an accident or malfunction of equipment important to safety, would not create an accident of a different type, and would not significantly reduce the margin of safety of the plant. We, therefore, propose to characterize the proposed amendment as involving no signficiant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Project Director: Lester S. Rubenstein.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: January 17, 1986.

Description of amendment request: The proposed amendments would revise the Technical Specifications by adding a provision to allow two plant operation with 3 out of 4 Essential Service Water (ESW) pumps operational and the two plants' ESW systems aligned in the cross-tie mode.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples is (vi) a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed amendment is directly related to the example.

The design basis for the D.C. Cook Nuclear Plant is a loss of coolant accident (LOCA) in one unit and hot shutdown in the other and for this condition, only two of the four ESW pumps, one per Unit, are necessary. The three pumps in a cross-tie mode of operation, as proposed by this amendment, are capable of exceeding the design basis by supplying sufficient water for a LOCA in one unit and cooldown of the other unit. Therefore, the proposed amendment will allow operation which may reduce a margin of safety by not having the fourth pump operable but having three pumps in a cross-time mode is clearly within the acceptable criteria for the Essential Service Water system at the D.C. Cook Nuclear Plant. Therefore, the Commission proposes that the changes do not involve a significant hazard consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee : Gerald Charnoff, Esquire, Shaw, Pittman, Potts

and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: B.J. Youngblood.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 30, 1985.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications reflecting the DAEC conformance with 10 CFR 50, Appendix R, Section III.G related to fire protection program. Specifically, changes in the Technical Specifications relate to (a) Remote Shutdown Panels, (b) Automatic Fire Suppression System, (c) Heat Detectors and Ionization Smoke Detectors, and (d) Administrative changes required for the fire protection program. The proposed changes are described as follows:

(a) Remote Shutdown Panels. The Remote Shutdown Panels (RSPs) are required to achieve and maintain cold shutdown of the DAEC nuclear reactor in the unlikely event that the main Control Room becomes uninhabitable or is damaged by fire. The proposed Technical Specification change provides for periodic inspection and testing of the panels to verify operability. The inspection and operability requirements are consistent with those currently required for existing safe shutdown instrumentation.

The proposed inspection and testing requirements for the RSPs replace the existing requirements for the existing Emergency Shutdown Control Panel (ESCP) since the RSP system now incorporates the function of the ESCP. Incorporating the ESCP into the RSP system makes the ESCP one of the local control panels in the RSP system. Likewise, the proposed bases change the wording of paragraphs 3.10.B and 4.10.B to reflect the RSP system rather than the ESCP.

(b) *Automatic Fire Suppression Systems.* The Automatic Fire Suppression Systems are required to protect safety-related systems required for safe plant shutdown and must be operable whenever safe shutdown equipment in the protected area is required to be operable. The proposed Technical Specification change provides for periodic inspection and testing to verify operability of these new fire suppression systems.

(c) *Heat Detectors and Ionization Smoke Detectors.* These fire detection systems are required to protect safety-related systems when the safe shutdown equipment in the protected area is required to be operable. The proposed Technical Specification change provides for periodic testing and inspection to verify operability of the fire detection systems. The bases on page 3.13–10 have been revised to incorporate the new fire detection instrumentation and provide compatibility with Table 3.13–1.

(d) *Administrative Changes.* The proposed Technical Specification change corrects three typographical errors which consist of an unneeded period on page iii, a misspelling of the word "detection" on page 3.13.1, and an error in the fire pump discharge nozzle head value. Correction of the discharge pressure is needed to be in conformance with the correct value found in the Final Safety Analysis Report (FSAR) and the manufacturer's pump curve. One page 3.13–10 and in Table 3.13–1, the "Control Auxiliary Panel Room" has been renamed the "Control Room Back Panel Area" to conform to terminology used by plant personnel. The existing "Zones" in Table 3.13–2 have been changed to "Fire Detection Zones" to distinguish them from the Fire Zones listed in the DAEC Fire Hazards Analysis (FHA).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

We have reviewed the license's request and find that the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated, because;

(a) The Remote Shutdown Panels are required to achieve and maintain cold shutdown of the reactor in the unlikely event that the main Control Room becomes uninhabitable or is damaged by fire and the proposed Technical Specification change provides for periodic inspection and testing to verify operability of the RSP, and constitutes an additional restriction in the Technical Specifications,

(b) The Automatic Fire Suppression Systems are required to protect certain safety-related systems, in case of fire, for safe plant shutdown, and the Technical Specification changes consisting of periodic testing and inspection to verify operability of the new fire protection systems, constitute additional restrictions in the Technical Specifications,

(c) Heat Detectors and Ionizing Smoke Detectors will be tested in the same manner as the existing detectors, and

(d) Administrative changes consist of an unneeded period on page iii, a misspelling of the word "detection" on page 3.13–1, and typographic correction of the fire pump nozzle discharge pressure value. In addition, changing the name of the "Control Auxiliary Panel Room" to the "Control Room Back Panel Area" conforms to terminology used by plant personnel and will eliminate a possible source of confusion, and changing the existing "Zones" in Table 3.13–1 to "Fire Detection Zones" clarifies the distinction between these detector zones and the "Fire Zones" described in the Fire Hazards Analysis (FHA).

(2) Does not create a possibility of a new or different kind of accident because;

(a) Remote Shutdown Panels (RSPs) utilize plant systems which have already been evaluated by the staff and the RSPs are inspected and tested in similar manner as the Control Room instrumentation,

(b) Automatic Fire Suppression Systems is an expansion of the existing Automatic Fire Suppression System, which has been evaluated by the staff,

(c) Fire detection system Technical Specification change provides for periodic testing and inspection to verify operability of these fire detection systems in the same manner as the existing detectors which have been evaluated by the staff, and

(d) Administrative changes described previously do not alter the meaning of the existing Technical Specifications.

(3) Does not involve a significant reduction in a margin of safety because;

(a) The inspection and testing of the Remote Shutdown Panels (RSPs) should increase the margin of plant safety since the RSPs provide increased capability to place the reactor in cold shutdown in the unlikely event that Control Room becomes uninhabitable or is damaged by fire. Furthermore, the staff has reviewed this method of alternate shutdown for BWRs and has issued a Safety Evaluation Report, dated January 6, 1983, approving its use at the DAEC,

(b) The inspection and testing of Automatic Fire Suppression Systems equipment does not reduce the margin of safety,

(c) The testing of the fire detection system will improve the margin of safety for protection of the safety-related equipment and components which are part of the safe shutdown systems, and

(d) Administrative changes described previously do not affect margins of safety.

Therefore, the staff has made a proposed determination that the application involved no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

NRC Project Director: Daniel R. Muller.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York.

Date of amendment request: December 6, 1985, as supplemented January 13, 1986.

Description of amendment request: The amendment would modify the Technical Specifications (TS) to reflect the addition of Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits for the General Electric fuel bundle, type P8DRB299. These limits were calculated by using the same approved General Electric methods used for the present fuel type P8DNB277. This proposed amendment would allow the use of P8DRB299 in the upcoming and other future fuel cycles since appropriate MAPLHGR limits would be provided for this fuel type.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has presented its determination of significant hazards considerations as follows:

10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed.

1. *The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant increase in the probability or consequences of an accident previously evaluated.* The methods used to analyze the Loss of Coolant Accident response of the P8DRB299 fuel conform to Appendix K requirements and are identical to those previously used. Results for the type P8DRB299 fuel analysis are included as Figure 3.1.7(f). The peak cladding temperature and maximum oxidation fraction limits are approximately the same as for previous fuel types. Therefore, the proposed amendment will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. *The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not create the possibility of a new or different kind of accident from any accident previously evaluated.*

Results for the type P8DRB299 fuel analysis demonstrate that the Loss of Coolant Accident response is approximately the same as for the fuel currently used. The peak cladding temerature and maximum oxidation fraction limits are insignificantly different, and therefore, (the P8DRB299 fuel type) constitute a one-for-one replacement with the currently used fuel. Therefore, the proposed amendment will not create the possibility of a new of different kind of accident from any previously evaluated.

3. *The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant reduction in the margin of safety.*

An analysis of the Loss of Coolant Accident response of proposed fuel bundle type P8DRB299 has been completed in accordance with methods previously used. The results of the analysis show that the peak cladding temperature and the maximum oxidation fraction limits are within the limits set by Appendix K and are approximately the same as those previously accepted. Therefore, the proposed amendemnt in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant reduction in the maring of safety.

As determined by the analysis above, this proposed amendment has no significant hazards consideration.

The staff has reviewed the licensee's significant hazards consideration determination and based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University College at Oswego, Penfield Library — Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Project Director: John A. Zwolinski.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: October 16, 1985.

Description of amendments requests: The proposed amendments request would revise the technical specifications regarding the method of calibration of the Analog Rod Position Indication Systems by providing more realistic operational requirements consistent with the safety requirements of the system. Specifically, the Unit 1 Technical Specifications would be modified as follows:

Replace 3.1.3.1 tlhrough 4.1.3.2 with revised Tech Specs 3.1.3.1 through 4.1.3.2.2.

Tech Specs 3.1.3.3 through 4.1.3.3 remain unchanged.

Replace 3.1.3.4 through 4.1.3.5 with revised Tech Specs 3.1.3.4 through 4.1.3.5.

Tech Spec Figures 3.1–1 and 3.1–2 remain unchanged.

Replace ¾.1.3 with revised Bases ¾.1.3

The Unit 2 Technical Specifications would be modified as follows:

Replace 3.1.3.1 through 4.1.3.2.2 with revised Tech Specs 3.1.3.1 through 4.1.3.2.2.

Tech Spec 3.1.3.3 through 4.1.3.3 remain unchanged.

Replace 3.1.3.4 through 4.1.3.5 remain revised Tech Spec 3.1.3.4 through 4.1.3.5.

Tech Specs Figures 3.1–1 and 3.1–2 remain unchanged.

Replace Bases ¾.1.3 with revised Bases ¾.1.3.

Basis for proposed no significant hazards consideration determination: Shutdown Banks and Control Banks A and B positions need to be known

accurately in a very limited range, near the top and bottom of the core. Accurate knowledge of these bank positions permits the operator to verify that the control rods in these banks are either fully withdrawn or fully inserted, the normal operating modes for these banks. Knowledge of these bank positions in these two areas satisfies all accident analysis assumptions concerning their position.

Recognizing that the Analog Rod Position Indication (ARPI) is very temperature sensitive, immediate verification of position after rod movement is shifted (in the revised Technical Specifications) from the ARPI to the group step counters with subsequent verification by the ARPI after temperature equilibration. Comparison of the group demand counters to the bank insertion limits with verifcation of rod position with the ARPI (after thermal soak after rod motion) is sufficient verification that the control rods are above the insertion limits as assumed in the accident analyses.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no signficant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a signficant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) Involve a signficant reduction in a margin of safety. The licensee has determined and the staff agrees that the requested amendments per 10 CFR 50.92 do not: (1) Involve a signficant increase in the probability or consequences of an accident previously evaluated for the Salem Units, since there are no changes to conditions assumed in the accident analyses; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated for the Salem Units, since no plant modifications resulted from change; or (3) Involve a signficant reduction in a margin of safety, since there are no changes to conditions assumed in the accident analyses.

Accordingly, the Commission proposed to determine the proposed changes to the Technical Specifications involve no signficant hazards considerations.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Project Directorate: Steven A. Varga.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: October 17, 1985.

Description of amendments request: The amendments request would change Technical Specifications Section 4, Table 4.3–1 for Salem Units Nos. 1 and 2 by adding surveillance requirements for the Reactor Trip Circuitry not presently included in the Technical Specifications. These additional requirements are responsive to NRC conclusions identified in Items 10 and 13 of the staff's Safety Evaluation dated June 25, 1984, that responded to the Public Service Electric and Gas Company's submittal regarding Item 4.3 of Generic Letter 83–28, "Reactor Trip Breaker Automatic Shunt Trip."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions which involve no significant hazards consideration include a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The proposed changes add surveillance requirements for the Reactor Trip Circuitry not presently included in the technical specifications. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Project Directorate: Steven A. Varga.

Southern California Edison Company et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit No. 1 (SONGS 1), San Diego County, California

Date of amendment request: November 21, 1985.

Description of amendment request: The proposed change would delete the interim surveillance testing requirement established on November 5, 1981 which requires that Safety Injection System (SIS) valves be tested once every 92 days. Deletion of the interim testing requirement would allow valve operability testing to be performed in accordance with existing Technical Specification 4.2.1 at intervals no longer than normal plant refueling intervals, which are typically 18 months in duration. The proposed change would also modify the surveillance testing procedure to require that valve actuation be accomplished in three to five seconds in order for the test to be successful.

Basis for proposed no significant hazards consideration determination: The interim SIS valve testing frequency was established by the NRC on November 5, 1981 in order to evaluate the effectiveness of a design modification made to the SIS valves to increase their reliability. The interim program required that a long-term testing program based upon the results of the interim testing be established at the next refueling outage. Since SONGS 1 did not operate from February 1982 until November 1984, the next refueling outage began in November 1985. During the past fuel cycle, the SIS valves were tested six times and each time the actuator force required to open the valves was well within the capacity of the valve actuators. Thus, the licensee has concluded that the design modification has been verified and the valve testing frequency may be reduced from every 92 days to once each refueling shutdown. The valve actuation time limitation is added in order to ensure that the valves actuate within the time constraints approved by the staff's November 5, 1981 Safety Evaluation.

Based upon the above discussion, the staff has concluded that the operation of the facility in accordance with the proposed license amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in the margin of safety.

Accordingly, the Commission's staff proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: San Clemente Public Library, 242 Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel,

james Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George E. Lear.

Southern California Edison Company, et al, Docket Nos. 50–361 and 50–362 San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: March 20, 1984, April 27, 1984 and October 10, 1985 (Reference PCN–8).

Description of Amendment Request: The proposed change would revise Technical Specification (TS) 3/4.6.1, "Containment Integrity" and 3/4.6.3, "Containment Isolation Valves." TS 3/4.6.1 requires that containment integrity be maintained when the plant is in the hot shutdown, hot standby, startup and power operation modes (Modes 1–4) and specifies surveillance requirements to verify containment integrity and actions to be taken when the requirements are not met. These requirements ensure that offsite doses resulting from postulated accidents are bounded by the accident analyses.

TS 3/4.6.3 requires that the containment isolation valves listed in Table 3.6–1 be operable when the plant is in Modes 1–4 and specifies surveillance requirements to verify operability and actions to be taken when the operability requirements are not met. The operability of containment isolation valves ensures that the containment atmosphere will be isolated from the outside environment in the event of a postulated accident. PCN–8 makes several revisions to TS 3/4.6.1 and 3/4.6.3 and the associated Bases. These changes are summarized as follows:

1. Reorganization of Table 3.6–1.
2. Removal of the Purge Isolation Valves from Section A.
3. Removal of Secondary System from Table 3.6–1.
4. Removal of Shutdown Cooling Relief Valves from Table 3.6–1.
5. Determination of "isolation time" from the Limiting Condition for Operation (LCO).
6. Restriction of Applicability of the existing action requirements to Sections A, B and C of Table 3.6–1.
7. Clarification of "penetration."
8. Revision of Surveillance Requirements.
9. Addition of a TS 3.0.4 Exception.
10. Correction of Typographical Errors.
11. Definition of "secured" and deletion of "deactivated."

Basis for proposed No Significant Hazards Consideration Determination: The Commission has provided guidance concerning the application of standards for determining whether a Significant Hazards Consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve Significant Hazards Considerations. Example (i) relates to a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature. Example (vi) relates to a change which may either result in some increase in the probability or consequences of a previously analyzed accident or may, in some way, reduce a safety margin but where the results of the change are currently within all acceptance criteria with respect to a system or component provided in the Standard Review Plan (SRP); for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. Each of the changes identified above is similar to one of these examples, therefore, it is proposed that the proposed changes do not involve Significant Hazards Considerations. A more detailed description of each of the proposed changes and why each is similar to one of the examples is provided below:

(1) Reorganization of Table 3.6.1. The existing Table 3.6–1 consists of four sections: (A) Containment Isolation; (B) Containment Purge; (C) Manual; and (D) Other. The containment isolation valves are categorized into Table 3.6–1. The proposed change redefines the four sections of Table 3.6–1 and reassigns the containment isolation valves remaining in Table 3.6–1 accordingly. The proposed Section A is titled "Automatic Containment Isolation." Included in Section A are automatic containment isolation valves which are actuated by a containment isolation actuation signal (CIAS). Also included in Section A are check valves located inside containment which are considered to be automatic containment isolation valves from the standpoint of the 10 CFR 50 Appendix A general design criteria. Section B of the proposed table remains titled "Containment Purge" and includes the containment purge isolation valves. The proposed Section C remains titled "Manual" isolation valves and includes those manual containment isolation valves which are assumed to be closed post-accident and can be opened intermittently during normal operation under administrative control. Section D remains titled "Other" and includes those valves whose post-accident position may be open and whose operability requirements are defined by technical specifications other than 3.6–3, "Containment Isolation Valves." As a result of the proposed redefinition of the containment isolation valve table section described above, many valves have been moved from one category to another. The valves remaining in Sections A, B and C of the table continue to be subject to the current action and surveillance requirements. Valves which are relocated to Section D of the table have new action and surveillance requirements which reference the technical specifications governing their primary function which is other than containment isolation. The reorganization moves the following valves, which are currently listed in Section D, to Section A: demineralized water check valve, 3"–236–C–675, fire protection check valve 4"–061–C–681, quench tank makeup valve, 2"–573–C–611, service air supply line check valve 2"–017–C–627, instrument air supply line check valve 1½" –016–C–617, LP nitrogen check valve ¾"–002–C–611, component cooling water inlet isolation valve HV 6223, component cooling water outlet Isolation Valve 2"–129–A–544, and nitrogen supply to safety injection tank check valve 2"–108–C–627. No response time is included for the check valves noted above. Response times of 40 seconds are included for HV 6233 and HV 6236.

The proposed reorganization of Table 3.6–1 discussed above is similar to Example (i) of 48 FR 14870. The valves remaining in Sections A, B and C of Table 3.6–1, existing actions and surveillance requirement items as discussed below, continue to apply to these valves. The valves relocated or remaining in Section D of the table are subject to TS surveillance and action requirements for the systems in which they are included. The redefinition of Section D includes those valves whose normal safe post-accident safe position is open, the action requirements for the systems which include these valves would have these valves maintained opened if inoperable. However, the existing TS 3.6.3 action requirements, which currently apply to these valves, would require these valves to be closed if inoperable. The proposed change eliminates the applicability of the existing TS 3.6.3 action requirements to the valves included in Section D of Table 3.6–1. The proposed change would apply the action requirements corresponding to their primary system function which would maintain the valves in safe position, whereas existing requirements would force closure of an inoperable valve rendering the system

inoperable. Because this change resolves an inconsistency in the technical specifications, it is similar to Example (i) of 48 FR 14870.

(2) Removal of the Purge Isolation Valves from Section A. Section A currently includes the containment mini-purge isolation valves HV 9821,, HV 9823, HV 9824 and HV 9825. These valves are deleted from Section A of the table because they are also included in Section B of the table and their operability is also covered by TS 3/4.6.1.7, "Containment Ventilation System" and TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation." This change eliminates unnecessary repetition of requirements in the technical specification and is therefore editorial and similar to Example (i) of 48 FR 14870.

(3) Removal of Secondary System from Table 3.6–1. Table 3.6–1 currently includes all main steam system related isolation valves that are associated with containment penetrations. These valves close on a main steam isolation signal to limit RCS cool down during postulated main steam line break events. In addition, certain main steam system valves, such as the main steam isolation valve and backup feedwater isolation valve, receive a containment isolation actuation signal on containment pressure high and close on a main steam line break inside containment. This mitigates the consequences of main steam system piping ruptures inside containment and prevents containment overpressurization due to such events. Response times for all main steam system related valves that receive an MSIS or CIAS are included in Table 3.3–5, "ESFAS Instrumentation Response Time" which is part of Technical Specification 3/4.3.2. In addition, Technical Specification 3/4.7.1.5 specifically addresses operability of the main steam isolation valves. The main steam relief valves are also deleted from Table 3.6–1 in that their operability requirements are specified in Technical Specification 3/4.7.1.1, "Main Steam Relief Valves."

The result of this change will mean that the containment isolation valve action requirements no longer would apply to main steam system valves. However, Technical Specification 3/4.3.2 will require that those valves which receive a MSIS and/or a CIAS are operable with specified response times. In addition, more specific requirements exist as noted for the MSIV's and main steam relief valves. Because the containment isolation valves will not longer apply directly to main steam system related valves, this change constitutes a relaxation in existing requirements. In this case, acceptance criteria related to the proposed change is found in SRP Section 6.2.4 "Containment Isolation System" and SRP Section 16, "Technical Specifications." SRP Section 6.2.4 requires that the reviewer determine that technical specifications for containment isolation valves are adequate. SRP Section 16.0 considers technical specifications consistent with the standard technical specifications to be acceptable. In this case, the standard technical specifications do not specifically address whether the main steam related isolation valves be included in Table 3.6–1. There is considerable variance between recently licensed but similar plants. For example, some units licensed prior to SONGS 2 and 3 and at least one unit licensed following SONGS 2 and 3 do not have the main steam system related isolation valves included in Table 3.6–1. The main steam system related isolation valves do not serve a containment isolation function in the same sense as isolation valves on systems which communicate directly with the reactor coolant system or containment atmosphere. The primary function of the main steam related valves is to limit RCS overcooling and overpressurization of the containment barrier in main steam line break events. The calculational assumptions for these events relate to the response times of these valves. One means of ensuring that response times are adequately covered by the technical specifications is to include the main steam isolation valves in Table 3.6–1. However, as noted above, response times for these valves are included in other technical specifications. Also, the critical requirements for main steam system related isolation valves are adequately covered by the technical specifications without their inclusion in Table 3.6–1. Therefore, the proposed change ensures that operability requirements for the main stream system related isolation valves are adequately covered by technical specifications and in a manner consistent with the standard technical specification. Thus, the acceptance criteria of SRP Sections 6.2.4 and 16.0 are satisfied and the proposed change is similar to Example (vi) of 48 FR 14870.

(4) Removal of Shutdown Cooling Relief Valve from Table 3.6–1. The shutdown cooling system relief valve PSV9349 is currently included in Section D of Table 3.6–1. Operability requirements for the shutdown cooling system relief valve are defined in TS 3/4.4.8.3, "Overpressure Protection Systems." The proposed change deletes PSV9349 from Table 3.6–1 since the operability requirements are included in Technical Specification 3/4.4.8.3. This change eliminates unnecessary redundancy in the technical specifications and is editorial and similar to Example (i) of 48 FR 14870.

(5) Deletion of "isolation time" from the Limiting Condition for Operation (LCO) LCO 3.6.3 requires that the containment isolation valves specified in Table 3.6–1 be operable with isolation times as shown in Table 3.6–1. The proposed change will require that the containment isolation valves specified in Table 3.6–1 be operable and deletes the reference to isolation times. The operability of containment isolation valves is verified by performance of the surveillance requirements. Proposed surveillance requirement 4.6.3.3 requires that the isolation time for each automatic valve listed in Sections A and B of Table 3.6–1 be determined within its limit when tested in accordance with the Inservice Inspection (ISI) Program. Because performance of the surveillance requirements is a condition of operability, it is redundant to include the response time requirement in the LCO. Because this change eliminates unnecessary redundancy, it is editorial and is similar to Example (i) of 48 FR 14870.

(6) Restriction of Applicability of Existing Action Requirements to Sections A, B and C of Table 3.6–1. The existing action requirements, which apply to all containment isolation valves listed in Table 3.6–1, require that an operable containment isolation valve be maintained in any penetration that is open and that inoperable valves be either restored to operable status, the penetration be isolated, or that the plant be in hot standby and cold shutdown within specified periods of time.

The proposed change would restrict the applicability of the action requirements to Section A, B and C of the proposed table. As noted above, Section D of the table includes those valves whose safe post-accident position may be open and whose operability requirements and actions are included in other specifications addressing the primary functions of the systems in which they are included. As a result, isolation of a penetration in the event of inoperability of one of the valves included in Section D may conflict with the primary function technical specification action requirements and is likely not the safest position for the value. The proposed change references the action

requirements for the LOC's pertaining to the valves or systems in which the valves in Section D are installed. This change eliminates the existing conflict in the existing technical specification and, therefore, is similar to Example (i) of 48 FR 14870.

(7) Clarification of Penetration. The action requirements refer to the affected penetration when a containment isolation valve is inoperable. Many penetrations branch prior to containment isolation valves; Thus each penetration may have one or more flow paths into containment associated with it. It is inappropriate to isolate all branches of such a penetration when a containment isolation valve is inoperable in only one branch. The existing word "penetration" may be misinterpreted to require that all branches be isolated. The proposed change resolves this potential misinterpretation by adding a note which defines a "penetration" as any flow path from the atmosphere or a piping system inside of containment to the atmosphere or a piping system outside of containment. Each flow path is considered as a separate penetration. Because the proposed change clarifies the existing specification and eliminates the possibility of misinterpretation, it is editorial and similar to Example (i) of 48 FR 14870.

(8) Revision of Surveillance Requirements. Currently there are three surveillance requirements for containment isolation valves. TS 4.6.3.1 requires that prior to returning an inoperable valve to service that it be demonstrated open by performing a cycling test and verification of isolation time. TS 4.6.3.2 requires that each isolation valve be demonstrated operable by verifying action on the appropriate ESF actuation signal. TS 4.6.3.3 requires that the isolation time of each power operated or automatic valve in Table 3.6–1 be determined within its limit when tested in accordance with the Inservice Inspection Program. These surveillance requirements are inadequate in that they fail to address the operability requirements for all valves that are not power operated or automatic isolation valves. The proposed change would institute surveillance requirements specifically addressing each type of isolation valve included in Table 3.6–1. The proposed TS 4.6.3.1 would require the isolation valve specified in Sections A and B of Table 3.6–1 (automatic containment isolation valves and containment purge isolation valves) to be demonstrated operable prior to returning an inoperable valve to service by performance of testing in accordance with the Inservice Inspection Program. This includes verification of isolation time where applicable. Additionally, valves secured in their actuated position are considered operable pursuant to this specification. The proposed TS 4.6.3.2 would require each isolation valve specified in Sections A and B of Table 3.6–1 except check valves, to be demonstrated operable by verifying that on a ESFAS test signal (CIAS, SIAS or CPIS as appropriate) each isolation valve actuates to its isolation position. This requirement corresponds to existing Specification 4.6.3.2. The proposed TS 4.6.3.3 requires that the isolation time of the valves (except check valves) included in Sections A and B, would be response time tested in accordance with the ISI Program. This surveillance requirement corresponds to the existing TS 4.6.3.3. A new surveillance requirement 4.6.3.4 is proposed to address operability of manual isolation valves specified in Section C of Table 3.6–1. This new surveillance requirement references existing surveillance requirements 4.6.1.1.A which requires verification of position on a routine basis and 4.6.1.2.D which requires leak rate testing in accordance with 10 CFR 50 Appendix J. The proposed TS 4.6.3.5 addresses surveillance requirements for the valves included in Section D. These valves shall be demonstrated operable in accordance with the ISI Program and surveillance requirements associated with those LCO's pertaining to each valve or the system in which it is installed. Valves secured in the ESFAS actuated position (i.e., safe post-accident position) are considered to be operable pursuant to this surveillance requirement. Again, TS 4.6.3.5 introduces no new requirements since the ISI Program is required by Specification 4.0.5 and the LCO's pentaining to the primary function of valves included in Section D already exist. The proposed surveillance requirements would consider valves secured in their safe positions to be operable. This is consistent with the definition of operable in that these valves are capable and, in fact, are performing their specified functions. Since the proposed surveillance requirements do not modify existing surveillance requirements, and restate other existing surveillance requirements for Sections C and D valves, the proposed change is editorial and is similar to Example (i) of 48 FR 14870.

(9) Addition of an Exception to TS 3.0.4. TS 3.0.4 prevents the plant from being taken to a higher operational mode while relying on the provisions of an action statement. The proposed change would add an exception to TS 3.0.4 in TS 3.6.3. As noted above, a valve which is secured in its safe position is performing its specified function and, therefore, is operable in accordance with operability definition. Thus, complying with the action requirements which require valves to be secured in their safe position, constitutes meeting the operability requirements. Therefore, once the action requirements are satisfied, the action is exited since the operability requirement is met. Thus, complies with the action statement does not restrict upward mode changes. Consistent with this, the TS 3.0.4 exception is added. Because the proposed change improves consistency within the technical specifications, the proposed change is similar to Example (i) of 48 FR 14870.

(10) Correction of Typographical Errors.

In Section C of Table 3.6–1 for Unit 2 only, the designation of Penetration 10C is changed to Penetration 10B to correct an existing error. For both units, the designations of hot leg injection isolation valves 3"–157–A–551 and 3"–158–A–551 are corrected to 3"–157–A–550 and 3"–158–A–550, respectively. These changes correct an existing error and are therefore similar to Example (i) of 48 FR 14870.

(11) Definition of Secure and Deletion of Deactivated.

Technical Specification 3/4.6.3 Action 1B currently requires that an affected penetration be isolated by the use of at least one deactivated automatic valve secured in the isolation position. Surveillance requirement 4.6.1.1.A requires that all penetrations not capable of being closed by automatic containment isolation valves and require to be closed during accident condition are closed by valves, blind flanges, or deactivated automatic valves secured in their positions. The proposed change would add notes to define secured as being locked, secured or otherwise prevented from unintentional operation. This definition of secured would be used in place of the word deactivated which is deleted from these specifications by the proposed change. Deletion of deactivated and institution of the definition of secured will prevent misinterpretations of the term deactivated.

The word deactivated can be interpreted to mean that an automatic valve closed be closed and deenergized for actuation with its main circuit breaker locked open. While this effectively prevents the valve from

unintentional operation, it also, in many cases, deenergizes the position indication circuits. Verification of the position of valves inside containment, for example, would not be possible during operation in this condition. There are several ways of preventing valves from spurious or unintentional operation short of deactivating them by racking out the breaker. The definition of the word secured will provide the necessary facility to maintain position indication which taking measures to secure the valves and avoid misinterpretation of the existing word deactivated. Because this change merely clarifies existing requirements, i.e., valves will still be required to be prevented from unintentional operation by some mechanism, the proposed change is editorial in nature and is similar to Example (i) of 48 FR 14870.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for Licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards considerations.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: December 12, 1985.

Description of amendment request: The proposed amendment would increase the maximum average exposure of any fuel assembly not on the periphery of the core from 16,800 MWD/MTU to 18,000 MWD/MTU.

Date of publication of individual notice in Federal Register: January 21, 1986 (51 FR 2776).

Expiration date of individual notice: February 20, 1986.

Local Public Document Room Location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Southern California Edison Comapny, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: November 27 and December 10, 1985.

Brief description of amendment: Technical Specification changes relating to the allowable range for the moderator temperature coefficient.

Date of publication of individual notice in Federal Register: December 27, 1985 (50 FR 53031).

Expiration date of individual notice: January 27, 1986.

Local Public Document Room Location: San Clemente Library, Avenida Del Mar, San Clemente, California 92672.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: September 19, 1985.

Brief description of amendments: The Administrative Controls section of the Technical Specifications were revised to reflect retitles of on-site and off-site licensee management. Other minor reorganizational changes were made for plant maintenance activities, and computer services and operations functions.

Date of issuance: January 27, 1986.

Effective date: January 27, 1986.

Amendment Nos.: 60 and 51.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register. November 6, 1985 (50 FR 46209).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1986.

No significant hazards consideration comments were received.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Arizona Public Service Company, et al. Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: October 16, 1985.

Brief description of amendment: The amendment extends the deadline for environmental qualification of electrical

equipment from November 30, 1985 to March 30, 1986.

Date of issuance: January 29, 1986.

Effective date: November 18, 1985.

Amendment No.: 4

Facility Operating License No. NPF-41. Amendment revised the license.

Date of initial notice in Federal Register. December 18, 1985 (50 FR 51619).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 29, 1986.

No significant hazards consideration comments were received.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Arizona Public Service Company, et al. Docket Nos. STN 50-528, and STN 50-529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, Arizona

Date of application for amendments: November 19, 1985.

Brief description of amendments: The amendments permit a one-time exception to the technical specifications for the purpose of making environmental qualification modifications to the hydrogen recombiner system.

Date of issuance: January 27, 1986.

Effective date: January 27, 1986.

Amendment Nos.: 5 (Palo Verde Unit 1) and 1 (Palo Verde Unit 2).

Facility Operating License Nos. NPF-41 and NPF-46. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register. December 18, 1985 (50 FR 51619).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 1986.

No significant hazards consideration comments were received.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Commonwealth Edison Company, Dockets Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: June 28, 1985.

Brief description of amendments: These amendments would modify Section 3.22, 4.22 and 6.5.B. of the Technical Specifications, relating to mechanical and hydraulic snubbers, to conform with Standardized Technical Specifications.

Date of issuance: January 22, 1986.

Effective date: January 22, 1986.

Amendment Nos.: 93 and 83.

Facilities Operating License Nos. DPR-39 and DPR-48. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register. July 31, 1985 (50 FR 31068).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Zion Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: June 7, 1985.

Brief description of amendment: Revises the Technical Specifications to change the limiting conditions for operation (LCO's) for containment cooling and Iodine Removal Systems and associated containment isolation provisions.

The amendment also contains editorial changes for consistency with the language used in other of the Indian Point 2 Technical Specifications.

Date of issuance: January 27, 1986.

Effective date: Immediately to be implemented within 30 days.

Amendment No.: 108.

Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1985 (50 FR 32791).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: August 28, 1985.

Brief description of amendment: The amendment changes the Technical Specifications to permit an exception to the experience requirements for six identified candidates for senior reactor operator licenses.

Date of issuance: January 24, 1986.

Effective date: January 24, 1986.

Amendment No.: 2.

Facility Operating License No. NPF-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 6, 1985 (50 FR 46212). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: November 17, 1981.

Brief description of amendment: This amendment allows an increase in the reactor coolant system controlled leakage rate as shown in Specification 3.4.6.2.e, from 10 gpm to 12 gpm.

Date of issuance: January 23, 1986.

Effective date: January 23, 1986.

Amendment No.: 85.

Facility Operating License No. DPR-72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 20, 1985, 50 FR 47862. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 28, 1985, as supplemented September 30, 1985.

Brief description of amendment: This amendment revises Figure 6-2 in the TMI-1 Technical Specifications. Figure 6-2 is an organization chart titled "TMI-1 Unit Staff." The amendment adds the positions titled "Manager(s), Plant Engineering" which report to the Plant Engineering Director, and limits the number of managers in these positions to six. In addition, the amendment changes the "Chemistry Supervisor" block title to "Staff Chemist."

Date of issuance: January 15, 1986.
Effective date: January 15, 1986.
Amendment No.: 112.
Facility Operating License No. DPR-50: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: November 6, 1985, 50 FR 46214.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: July 31, 1985.
Brief description of amendment: The amendment updates Technical Specification Table 3.18-1, "Fire Detection Instrumentation," to include three locations where fire detection instrumentation has been added as a result of NRC acceptance of exemption requests.
Date of issuance: January 14, 1986.
Effective date: January 14, 1986.
Amendment No. 111.
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34942).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Street, Harrisburg, Pennsylvania 17126.

Indiana and Michigan Electric Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: December 13, 1985, as supplemented December 19, 1985.
Brief description of amendment: The amendment extends on a one-time basis the 18 month surveillance frequency by 2 months for testing the reactor trip system instrumentation, the engineered safety feature actuation system instrumentation, the containment sump level and flow monitoring instrumentation, the reactor coolant pump system relief and block value instrumentation, the reactor coolant pump spray headers, the electrical power systems including: the alternate source, diesel generator and batteries, the energy core cooling system subsystem, some snubbers, and inspection of the divider barrier seal.
Date of issuance: January 28, 1986.
Effective date: January 28, 1986.
Amendment No. 78.
Facility Operating License No. DPR-74. Amendment revised the Technical Specifications.
Date of initial Notice in **Federal Register:** January 10, 1986 (51 FR 1315).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 1986.
No significant hazards consideration comments received: No.
Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.
Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of application for Amendment: June 6, 1985.
Brief description of amendment: This amendment revises the Technical Specifications by adding four smoke detectors in the Reactor Auxiliary Building and by correcting the identifying numbers of 3 containment isolation valves.
Date of issuance: January 27, 1986.
Effective date: January 27, 1986.
Amendment No.: 3.
Facility Operating License No.: NPF-38.
Amendment revised the Technical Specifications.
Date of initial Notice in **Federal Register:** The Commission's related evaluation is contained in a Safety Evaluation dated January 27, 1986.
No significant hazards consideration comments received: No.
Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.
Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: October 17, 1985.
Brief description of amendment: Change Figure 6.2.1 to reflect a change in the management organization.
Date of issuance: January 16, 1986.
Effective date: January 16, 1986.
Amendment No.: 77
Facility Operating License No. DPR-63. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49787).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1986.
No significant hazards consideration comments received: No.
Local Public Document Room location: State University College at Owsego, Penfield Library—Documents, Oswego, New York 13126.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: June 24, 1983.
Brief description of amendment: The amendment revises the Technical Specifications to provide limiting Conditions for Operation and Surveillance Requirements for the following items: (1) Overtime Limitations, (2) Reporting Safety/Relief Valve Failure and Challenges, (3) Reactor Core Isolation Cooling (RCIC) and RCIC Suction Transfer, (4) Isolation of RCIC Modifications and (5) Additional Monitoring Instrumentation. These changes relate to TMI Action Items covered by Generic Letters 83-02 and 83-36 dated January 10 and November 1, 1983 respectively. The items not included in this amendment either have been resolved or will be addressed separately.
Date of issuance: January 22, 1986.
Effective date: January 22, 1986.
Amendment No. 37.
Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41250).
The Commission's related evaluation of the amendment is contained in a safety Evaluation dated January 22,. 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Southern California Edison Company, et al. Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California.

Dates of application of amendments: November 27, 1985.

Brief description of amendments: The amendments change the Technical Specification 3/4.1.1.3, "Moderator Temperature Coefficient" to reflect the use of a more negative moderator temperature coefficient needed for end-of-cycle operations in Cycle 2.

Date of Issuance: 1/27/86.

Effective date: 1/27/86 and fully implemented within 30 days of issuance.

Amendment Nos.: 41 and 30.

Facility Operating License Nos. NPF–10 and NPF–15: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 27, 1985 (50 FR 53031).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated 1/27/86.

No significant hazards consideration comments were received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Tennessee Valley Authority , Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application of amendment: May 6, 1985.

Brief Description of amendment: The amendments change the Technical Specifications to require that acoustic monitors be one of the two required channels of pressurizer power relief valve and safety valve position indicators in accident monitoring tables and bases.

Date of Issuance: January 29, 1986.

Effective date: January 29, 1986

Amendment Nos.: 43 and 35.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1985 (50 Fr 31072).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated Januaray 29, 1986

No Significant Hazards Consideration comments received: No.

Local Public Document Rom location: Chattanooga-Hamiltion County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 13, 1985 as supplemented by letter dated November 15, 1985.

Brief description of amendment: Technical Specification 4.7.10.1.2.c has been revised to allow the 18-month inspection of a fire pump diesel engine to be performed when the plant is at power, as well as when the plant is shutdown. By letter dated November 15, 1985, the licensee informed us that the subject inspection will be performed either during shutdown or during power operation when the other two fire pumps are operable. By the November 15, 1985 letter, the licensee proposed wording for Specification 4.7.10.1.2.c to clarify this point.

Date of issuance: January 22, 1986.

Effective date: January 22, 1986.

Amendment No.: 11.

Facility Operating License No., NPF–30: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38923).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 22, 1986.

No significant hazards consideration comments received: No

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and Olin Library of Washington University, Skinker and Lindell Boulevard, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50–483, Callawary Plant, Unit No. 1, Callaway County, Missiouri

Date of amendment request: October 15, 1985, as supplemented by letter dated December 23, 1985.

Description of amendment request: The amendment revises Technical Specification Fiqures 3.9–1 and 5.6–1 with curves that represent criteria for storing Westinghouse optimized fuel or standard fuel in Region 2 of the spent fuel pool, revises the maximum initial enrichment limit for reload fuel in the reactor and for storage of reload fuel in the spent fuel pool from 3.5 weight percent uranium-235 to 4.2. weight percent uranium-235, and revises the nominal center-to-center distance between fuel assemblies placed in storage racks from 9.14 to 9.24 inches.

Date of issuance: January 24, 1986

Effective date: January 24, 1986

Amendment No.: 12

Facility Operating License No. NPF–30: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46218) as corrected by notice on December 2, 1985 (50 FR 49468)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library Of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Bethesda, Maryland, this 5th day of February 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Acting Deputy Director, Division of PWR Licensing-A Office of Nuclear Reactor Regulation.

[FR Doc. 86–2881 Filed 2–11–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–498A]

Houston Lighting and Power Co. et al. Receipt of Antitrust Information

The Houston Lighting and Power Company acting as agent for the City of Austin, the City Public Service Board of San Antonio, and Central Power and Light Company has submitted antitrust information in conjunction with the application for an operating license for a pressurized water reactor, known as South Texas, Unit 1, located in Matagorda County, Texas, 15 miles southwest of Bay City. The data submitted contain antitrust information for review, pursuant to NRC Regulatory Guide 9.3, necessary to determine whether there have been any significant changes since the antitrust settlement in September of 1980.

On completion of a staff antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not

been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the Federal Register notice. The results of any reevaluation that are requested will also be published in the Federal Register and copies sent to the Washington, DC and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW, Washington DC 20555, and in the local public document room at the Matagorda County Courthouse, 1700 7th Street, Bay City, Texas 77414.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which have occurred since the antitrust settlement should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation, on or before March 14, 1986.

Dated at Bethesda, Maryland, this 5th day of February, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-3096 Filed 2-11-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Issuance of Amendmant to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-63 issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 1, located in Oswego County, New York.

The amendment would modify Technical Specification Sections 3.6.2 and 4.6.2 allow Yarway water level column No. 12 to be out of service during the Spring 1986 refueling outage. This request is in accordance with the licensee's application for amendment dated January 15, 1986.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated: or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Yarway water level transmitter automatically initiates the core spray system which is required to be operational in the cold shutdown or refuel condition. In addition, the instrumentation that initiates a reactor scram is also required to be operational in the refuel condition. Since the core spray system or reactor scram can be actuated by the redundant Yarway water level column or by manual initiation in the event of a loss of water level in the reactor vessel, the proposed amendment will not increase the probability or consequences of an accident previously evaluated.

The proposed amendment will allow taking one of the Yarway water level columns out of service by cutting and capping the instrument line. Therefore, the proposal will not create the possibility of a new or different kind of accident from any accident previously evaluated.

While there is some reduction in the margin of safety as the tripping logic for the initiation of core spray is being reduced from a one out of two taken twice to a one out of one taken twice, it is not considered to be a significant reduction in the margin of safety. This will occur only during cold shutdown/refuel conditions when the reactor coolant is at or near ambient temperature. Therefore, the probability of both operable water level transmitters not accurately indicating a water level drop is extremely unlikely (i.e. there won't be any sensing line flashing due to high pressure and temperature). In addition, the core spray pumps and reactor scram can be manually initiated from the control room. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC.

By March 12, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petiton for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first perhearing conference scheduled in the prceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the rquest for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski, Director, BWR Project Directorate #1, Division of BWR Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, D.C. 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the State University College at Oswego, Penfield Library Documents, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 10th day of February 1986.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate #1 Division of BWR Licensing.

[FR Doc. 86-3217 Filed 2-11-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Proposed Revision of Circular A-21, "Cost Principles for Educational Institutions"

AGENCY: Office of Management and Budget.

ACTION: Proposed revision to OMB Circular A-21, "Cost Principles for Educational Institutions".

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed revision of Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions." The revision is based on a recommendation by the Department of Health and Human Services and the Office of Science and Technology Policy to establish a fixed allowance for university administrative costs.

OMB Circular A-21 establishes Govermentwide accounting principles for the direct and indirect (allocated overhead) costs of Federal grants and contracts with colleges and universities. The Circular divides allocated overhead costs into seven "cost pools" that form the basis of a university's indirect cost rate. Four of these pools are administrative costs and, therefore, difficult to measure or evaluate in terms of their relevance to sponsored research projects. The remaining three cost pools are subject to less debate. They reflect costs of operation and maintenance, use charges for buildings and equipment, and libraries.

In Fiscal Year (FY) 1984 estimated Federal payments for university overhead were about $1.7 billion or 46% of an estimated $3.7 billion for direct scientific research.

The problem of rising overhead costs has been the subject of continuing and extensive debate by the Congress, the universities and research community, and others. This year the Inspector General for the Department of Health and Human Services (HHS) completed a study of indirect costs of federally-sponsored research, confirming the existence of opportunities to control these costs. Sharing the concern about the rapid rise in indirect costs, the Office of Science and Technology Policy (OSTP) provided HHS recommendations for Governmentwide options to control indirect cost growth.

As a followup, HHS proposed a ceiling on university administrative overhead costs for federally-sponsored grants and contracts. The proposal is consistent with a recommendation made by the OSTP that a fixed allowance,

based on average rates over a five-year period, be used to reimburse administrative overhead costs. The 26% rate shown in the proposal is the average rate for all major universities over the last five years. The proposal would subsequently reduce that fixed rate to 20%.

A fixed rate for administrative costs will go a long way towards solving the problem of rising indirect costs and at the same time reduce paperwork for the institutions. It will reform and simplify the indirect cost process and eliminate the need for complex reporting to support charges for allocated administrative costs.

This proposed revision will also help reduce the budget deficit, consistent with the President's FY 1987 Budget and the Gramm-Rudman-Hollings "Balanced Budget and Emergency Deficit Control Act of 1985," Pub. L. 99–177. It is estimated that this proposal will save $100 million in FY 1987, and over $200 million in FY 1988.

In order to achieve these savings, agencies will limit Federal reimbursement for allocated administrative overhead to 26% by April 1, 1986, and then further limit reimbursement to 20% by April 1, 1987.

It is, therefore, proposed that the following changes be made to Section F. Identification and Assignment of Indirect Costs:

• Change the heading of Section F.3 to "Administrative Costs"

• Revise Section F.3 as follows:

(a) The expenses under this heading are those that have been incurred for: (1) General Administration and General Expenses; (2) Departmental Administration; (3) Sponsored Projects Administrtion; and, (4) Student Administration and Services.

(b) Effective April 1, 1986, administrative costs allocated to sponsored agreements shall be limited to 26% of modified total direct costs (as defined in G.2.) except that a lower rate shall be applicable where such rate is currently in effect for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services.

(c) Effective April 1, 1987 the rate specified in paragraph (b) shall be reduced to 20%.

(d) Implementation dates up to one year later than those specified in paragraphs (b) and (c) are authorized.

(e) No documentation shall be required to support the rates specified in paragraph (b) and (c). An institution shall not change its accounting practices to reclassify administrative costs from indirect costs to direct costs of sponsored agreements.

(f) Agencies may authorize reimbursement of additional administrative costs only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

• Delete Sections F.4., F.5. and F.7.

Comments: Comments should be submitted within 30 days to: Room SB 5000, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503.

Dated: February 7, 1986.

Carole J. Dineen,

Associate Director for Management.

[FR Doc. 86–3114 Filed 2–11–86; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Traffic Control Tower at Dade-Collier Airport, Miami, FL; Closing

Notice is hereby given that on or about February 15, 1986, the Airport Traffic Control Tower at Dade-Collier Airport, Miami, Florida, will be closed. Services to the general aviation public of Miami, Florida, formerly provided by this office, will be provided by the Miami Air Route Traffic Control Center in Miami, Florida. This information will be reflected in the FAA Organization Statement the next time it is reissued.

Issued in Atlanta, Georgia, on February 4, 1986.

William H. Pollard,

Acting Director, Southern Region.

[FR Doc. 86–2996 Filed 2–11–86; 8:45 am]

BILLING CODE 4910-13-M

Airport Traffic Control Tower at Malcolm McKinnon Airport, St. Simons; Island, GA Closing

Notice is hereby given that on or about February 15, 1986, the Airport Traffic Control Tower at Malcolm McKinnon Airport at St. Simons Island, Georgia, will be closed. Services to the general aviation public of St. Simons Island, Georgia, formerly provided by this office, will be provided by the Brunswick Flight Service Station in St. Simons Island, Georgia, and the Jacksonville Air Route Traffic Control Center in Hilliard, Florida. This information will be reflected in the FAA Organization Statement the next time it is reissued.

Issued in Atlanta, Georgia, on February 4, 1986.

William H. Pollard,

Acting Director, Southern Region.

[FR Doc. 86–2997 Filed 2–11–86; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

State Maritime School Contracts

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The Maritime Administration announces its intent not to renew its contracts with state maritime schools.

FOR FURTHER INFORMATION CONTACT: Arthur W. Friedberg, Director, Office of Maritime Labor and Training, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, Tel. (202) 426–5755.

SUPPLEMENTARY INFORMATION: The Maritime Administration does not intend to renew its existing agreements, as defined in 46 CFR 310.1(d) and 310.12–1, with the state maritime schools, including provisions pertaining to new student incentive payments, annual support payments and funds for maintenance and repair of training vessels.

These agreements will terminate on June 30, 1986. The affected schools are listed in 46 CFR 310.3 and are as follows:

California Maritime Academy, Vallejo, California

Maine Maritime Academy, Castine, Maine

Massachusetts Maritime Academy, Buzzards Bay, Massachusetts

State University of New York Maritime College, Ft. Schuyler, New York

Texas Maritime College, Texas A&M University, Galveston, Texas

Great Lakes Maritime Academy, Northwestern Michigan College, Traverse City, Michigan

This notice is in accordance with proposals contained in the President's FY 1987 budget message to Congress. If any new agreements are needed they will be developed in the near future. Any revisions to 46 CFR Part 310 also would be proposed for comment in a future rulemaking.

By Order of the Maritime Administration.

Dated: February 7, 1986.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 86–3098 Filed 2–11–86; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration, Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes March 13, 1986.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9563-N	W.R. Grace & Co., Lexington, MA	49 CFR 173.320(a) (1), (2)	To authorize highway shipment of nitrogen, refrigerated liquid (cryogenic liquid) as essentially non-regulated when offered under certain conditions. (Mode 1.)
9564-N	Alexander Manufacturing Co., Mason City, IA	49 CFR 173.365(a)(2)	To authorize a one-time shipment of 31 DOT Specification 17E and 17H drums, containing a poison B solid, weighing approximately 800 pounds each. (Mode 1.)
9566-N	United Technologies, San Jose, CA	49 CFR 173.7, 173.88, 173.92	To authorize shipment of rocket motors, Class B, in a propulsive state with igniters installed in a specially designed packaging and transport vehicle (Mode 1.)
9567-N	Burris Chemical, Inc., Charleston, SC	49 CFR 173.272(f)(i)(20)	To authorize shipment of sulfuric acid, classed as a corrosive material in concentrations of 77.5% to 95% in non-DOT specification portable tanks. (Mode 1.)
9568-N	AZTRON Chemical Services, Inc., South Houston, TX.	49 CFR 173.245(31), 173.249	To authorize shipment of sodium hydroxide in DOT Specification 12 gauge stainless steel MC-306 cargo tanks. (Mode 1.)
9569-N	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids packed in one gallon or less tin cans secured in a polyethylene insert fitted to the lid of a 3½ gallon 29 gauge non-DOT specification steel pail containing a non-hazardous resin mix. (Mode 1, 2, 3, and 4.)
9570-N	Hoke Incorporated, Cresskill, NJ	49 CFR 173.3, Part 173, Subpart D, E, F, G	To manufacture, mark and sell non-DOT specification cylinders comparable to DOT Specification 3E except they are constructed of monel metal for shipment of certain flammable and nonflammable gases, flammable liquids, corrosive materials and oxidizers. (Modes 1, 2, 3, and 4.)
9571-N	U.S. Department of Justice, Washington, DC	49 CFR 173.100(bb), 173.113(a)(1), 173.86	To authorize shipment of up to 5 grams of an explosive inspecially designed packaging as essentially nonregulated. (Mode 4.)
9572-N	DuBois Chemicals, Division of Chemed Corp., Cincinnati, OH.	49 CFR 173.256, 173.277	To authorize shipment of compound cleaning liquid not exceeding 14% hydrofluoric acid and hypochlorite solution not to exceed 16%, in 18 gauge steel 55 gallon capacity DOT Specification 6D drum with a DOT Specification 2U inside container (Modes 1, 2.)
9573-N	Chevron Resources Co., Grants, NM	49 CFR 173.425(c)	To authorize shipment of uranium ore, coated with dust retardant material, in open-top gondola cars. (Mode 2)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e))

Issued in Washington, DC, on February 4, 1986.

Joseph T. Horning,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials Transportation.

[FR Doc. 86-3035 Filed 2-11-86; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Application To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes February 26, 1986.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2587-X	Denison, Inc., Fredonia, KA	2587
2787-X	U.S. Department of Defense, Falls Church, VA.	2787
2563-X	U.S. Department of Energy, Washington, DC.	3563
3667-X	Groendyke Transport, Inc., Enid, OK.	3667
3941-X	Kerr-McGee Chemical Corp., Oklahoma City, OK.	3941
4052-X	The Boeing Co., Seattle, WA	4052
4600-X	Great Lakes Chemical Corp., El Dorado, AR.	4600
4612-X	EM Science, Cincinnati, OH	4612
4612-X	Aldrich Chemical Co., Inc., Milwaukee, WI.	4612
4850-X	Halliburton Service, Inc., Duncan, OK.	4850
4884-X	Union Carbide Corp., Danbury, CT [1].	4884
5861-X	HTL Industries, Inc., Duarte, CA	5861
5891-X	U.S. Department of Energy, Washington, DC.	5891
5951-X	Dixie Petro-Chem, Inc., Dallas, TX.	5951
5951-X	Jones Chemicals, Inc., Caledonia, NY.	5951
5951-X	Hill Brothers Chemical Co., Tucson, AZ.	5951
6016-X	Guttman Welding Supply Co., Belle Vernon, PA.	6016
6016-X	Huber Supply Co., Mason City, IA.	6016
6309-X	Olin Corp., Stamford, CT	6309
6325-X	Mining Services International Corp., Salt Lake City, UT.	6325
6333-X	Allied Corp., Morristown, NJ	6333
6563-X	S.L.O. Health Products, Inc., Baywood Park, CA.	6563
6602-X	Great Lakes Chemical Corp., El Dorado, AR.	6602
6637-X	Russell-Stanley Corp., Red Bank, NJ.	6637
6735-X	Great Lakes Chemical Corp., El Dorado, AR.	6735
6787-X	Russell-Stanley Corp., Red Bank, NJ.	6787
6805-X	Union Carbide Corp., Danbury, CT.	6805
6904-X	Aldrich Chemical Co., Inc., Milwaukee, WI.	6904
6985-X	U.S. Department of Energy, Washington, DC.	6985
7011-X	Russell-Stanley Corp., City of Industry, CA.	7011
7052-X	Ballard Technologies Corp., North Vancouver, B.C..	7052
7052-X	Technical Oil Tool Corp., Norman, OK.	7052
7052-X	U.S. Department of Defense, Falls Church, VA.	7052
7052-X	Geophysical Research Corp., Tulsa, OK.	7052
7052-X	Datasonics, Inc., Cataumet, MA	7052
7052-X	Sonatech, Inc., Goleta, CA	7052
7052-X	Sparton Corp., Jackson, MI	7052
7052-X	Safi Corp., of America, Cockeysville, MD.	7052
7052-X	U.S. Department of Energy, Washington, DC.	7052
7052-X	Bren-Tronics, Inc., Commack, NY	7052
7052-X	Moli Energy Limited, Burnaby, B.C., Canada, PA.	7052
7052-X	Duracell Inc., Bethel, CT	7052
7052-X	Eagle-Picher Industries, Inc., Joplin, MO.	7052
7052-X	ENMET Corp., Ann Arbor, MI	7052
7052-X	Rockwell International Corp., Anaheim, CA.	7052
7052-X	Hazeltine Corp., Braintree, MA	7052
7454-X	E.I. du Pont De Nemours & Co., Inc., Wilmington, DE.	7454
7455-X	do	7455
7477-X	Systron Donner Corp., Concord, CA.	7477
7548-X	U.S. Department of Defense, Falls Church, VA.	7548
7621-X	Great Lakes Chemical Corp., El Dorado, AR.	7621
7651-X	Austin Powder Co., Cleveland, OH.	7651
7654-X	Mallinckrodt, Inc., Paris, KY	7654
7674-X	U.S. Department of Defense, Falls Church, VA.	7674
7731-X	Minnesota Valley Engineering, Inc., New Prague, MN.	7731
7770-X	Eurotainer, S.A., Paris, France	7770
7891-X	Sigma-Aldrich Corp., Saint Louis, MO.	7891
7898-X	U.S. Department of Defense, Falls Church, VA.	7898
7915-X	Olin Corp., East Alton, IL	7915
7929-X	C-I-L Inc., North York, Ont. Canada.	7929
7943-X	Georgia-Pacific Corp., Montebello, CA.	7943
7948-X	Erickson, Inc., Richmond, CA	7948
7972-X	E.I. du Pont De Nemours & Co., Inc., Wilmington, DE.	7972
8006-X	Kilgore, Corp., Toone, TN	8006
8289-X	Olin Corp., East Alton, IL	8289
8299-X	HTL Industries, Inc., Duarte, CA	8299
8352-X	Degussa Corp., Teterboro, NJ	8352
8363-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	8363
8390-X	Mallinckrodt, Inc., Paris, KY	8390
8390-X	Texas Instruments, Inc., Dallas, TX.	8390
8390-X	Allied Corp., Morristown, NJ	8390
8394-X	Whirlpool Corp., La Porte, IN	8394
8401-X	ERA Helicopters, Inc., Anchorage, AK.	8401
8413-X	Williams International, Walled Lake, MI [2].	8413
8427-X	U.S. Department of Defense, Falls Church, VA.	8427
8436-X	Pennwalt Corp., Buffalo, NY [3]	8436
8445-X	Kerr-McGee Chemical Corp., Oklahoma City, OK.	8445
8525-X	Associated Container Transportation (USA), New York, NY.	8525
8627-X	Exxon Chemical Co., Houston, TX.	8627
8627-X	Champion Chemicals, Inc., Houston, TX.	8627
8697-X	ERA Helicopters, Inc., Anchorage, AK.	8697
8717-X	Goodloe E. Moore, Inc., Danville, IL.	8717
8747-X	Copps Industries, Inc., Menomonee Falls, WI.	8747
8789-X	Turner, Sycamore, IL	8789
8811-X	American Hoechst Corp., Somerville, NJ.	8811
8870-X	Culligan International Co., Northbrook, IL.	8870
8870-X	Hach Co., Ames, IA	8870
8870-X	Everpure, Inc., Westmont, IL	8870
8885-X	Copps Industries, Inc., Menomonee Falls, WI.	8885
8987-X	Hedwin Corp., Baltimore, MD	8987
9005-X	Emerald Air, Austin, TX	9005
9077-X	Central Vermont Railway, Inc., St. Alban, VT.	9077
9094-X	CTL Distribution, Inc., Mulberry, FL.	9094
9105-X	Sea-Land Service, Inc., Elizabeth, NJ.	9105
9181-X	GTE Products Corp., Waltham, MA.	9181
9184-X	Cyanamid Canada, Inc., East Willowdale, Canada.	9184
9184-X	Midwest Carbide Corp., Keokuk, IA.	9184
9208-X	U.S. Department of Defense, Falls Church, VA.	9208
9209-X	Allied Chemical, Morristown, NJ	9209
9211-X	American Overseas Marine Corp., Quincy, MA.	9211
9213-X	Bulk-Pack, Inc., West Monroe, LA [4].	9213
9230-X	Nuclear Metals, Inc., Concord, MA.	9230
9241-X	Stoneco, Inc., Dacono, CO	9241
9244-X	Stoneco, Inc., Dacono, CO	9244
9400-X	Poly Cal Plastics, Inc., French Camp, CA [5].	9400
9545-X	Medical Diagnostics, Inc., Columbia, MD [6].	9545

[1] To authorize certain liquefied compressed gases as additional commodities in steel cylinders fabricated from 316 stainless steel in addition to the approved 304 stainless steel.

[2] To renew and to approve a high density polyethylene outside packaging instead of corrugated tri-wall container.

[3] To authorize an additional design cargo tank for shipment of organic peroxide solutions and to authorize use of a contract carrier.

[4] To authorize shipment of magnesium granules, classed as flammable solid.

[5] To authorize filling and discharge of portable tanks while attached to a chassis.

[6] To authorize rail as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
3330-P	Howmet Turbine Components Corp., Whitehall, MI.	3330
4453-P	Sierra Chemical Co., Reno, NV	4453
6045-P	Viskase Corp., Chicago, IL	6045
6309-P	Foam Supplies Inc., Olivette, MO	6309
7052-P	Cincinnati Milacron Co., Worchester, MA.	7052
7052-P	The Foxboro Co., Foxboro, MA	7052
7052-P	GEODATA Systems Limited, Wiltshire, England.	7052
8244-P	Vann Systems, a Division of Halliburton Co., Houston, TX.	8244
8445-P	Merrell Dow Pharmaceuticals Inc., Cincinnati, OH.	8445
8988-P	Marathon Oil Co., Lafayette, LA	8988
8995-P	Foam Supplies Inc., Olivette, MO	8995
9130-P	Aquarius Pool & Spa Supply, Inc., Elk Grove Village, IL.	9130
9208-P	U.S. Department of Energy, Washington, DC.	9208
9262-P	Schlumberger Ltd., Houston, TX	9262
9262-P	Schlumberger Technology Corp., Houston, TX.	9262
9262-P	Gearhart Industries, Inc., Fort Worth, TX.	9262
9262-P	Schlumberger Offshore Services, Houston, TX.	9262
9275-P	Firmenich, Inc., Princeton, NJ	9275
9275-P	Mary Kay Cosmetics, Dallas, TX	9275
9275-P	Carter-Wallace, Inc., New York, NY.	9275
9529-P	Viskaske Corp., Chicago, IL	9529
9549-P	Schlumberger Ltd., Houston, TX	9549
9549-P	Schlumberger Technology Corp., Houston, TX.	9549
9549-P	Schlumberger Offshore Services, Houston, TX.	9549

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 4, 1986.

Joseph T. Horning,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials Transportation.

[FR Doc. 86-3036 Filed 2-11-86; 8:45 am]

BILLING CODE 4910-60-M

[86-1]

Compressed Gas Cylinders; DOT Specification 39 and 4B240ET Cylinders; Potential Safety Problems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise interested persons that certain compressed gas cylinders marked as meeting either DOT specification 39 or

4B240ET, in fact may not be in full compliance with those specifications, and consequently should not be used to transport in commerce hazardous materials required or permitted to be shipped therein.

FOR FURTHER INFORMATION CONTACT: James E. Henderson, Office of Hazardous Materials Transportation (OHMT), 400 Seventh Street, SW., Washington, DC 20590, (202) 755–5893.

SUPPLEMENTARY INFORMATION: In 1978, at the request of a shipper, Tube Manifold Corporation, 415 Bryant Street, North Tonawanda, New York, manufactured a number of non-DOT specification cylinders with a brazed ¾-inch National Gas Taper thread (NGI) fitting. There is reason to believe that these cylinders were filled with hazardous materials and shipped in probable violation of 49 CFR 171.2(a) and 173.302(a) of the Hazardous Materials Regulations. In 1980, while in transportation, one of these cylinders failed at the brazed joint where the threaded fitting is attached to the cylinder.

Recently, a cylinder manufactured by Tube Manifold in 1983, and marked to show compliance with the DOT–39 specification failed in the same manner. The size, design, and method of attachment of the threaded fitting are identical to those of the non-DOT specification cylinder involved in the first incident. An investigation by RSPA has determined that Tube Manifold has manufactured other cylinders marked as meeting DOT specification 39 or 4B240ET with this same fitting design and method of attachment.

In view of the mode of failure in these incidents, and possible problems with the company's manufacturing and testing practices, the RSPA believes that any cylinder marked by Tube Manifold Corporation as meeting DOT specification 39 or 4B240ET with a ¾-inch threaded fitting attached to the head by brazing may present a danger to carrier personnel and the public at large. Consequently, RSPA believes that persons in possession of such cylinders (marked on the head of cylinders marked DOT 4B240ET with Tube Manifold's manufacturer symbol "TMC", and on cylinders marked DOT 39 with Tube Manifold's registration number M–1045) should assure that they are in full compliance with the regulations. Any cylinders found not to be in compliance may not be used for the shipment of hazardous materials.

Persons in possession of cylinder subject to this notice who do not have the capability to determine compliance should contact Tube Manifold Corporation, 415 Bryant Street, North Tonawanda, New York 14120.

(49 U.S.C. 1802, 1803, 1804, 1805, 1806, 1808; 49 CFR 1.53(e))

Issued in Washington, DC on February 7, 1986 under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86–3034 Filed 2–11–86; 8:45 am]

BILLING CODE 4910–60–M

National Hazardous Materials Transportation Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Hazardous Materials Transportation Advisory Committee (NHMTAC) on February 27, 1986, 8:30 a.m. until 5:00 p.m. at the DOT Headquarters Building, 400 Seventh Street, SW., Room 2230, Washington, DC 20590.

The purpose of the meeting is to discuss revised reports on the findings and/or recommendations of the Committee's three working groups and to take action on these findings. The working groups are organized around the three areas of prevention, information exchange, and emergency response, which the Committee had previously determined to be issues of priority concern.

Attendance is open to the public but limited to the space available. Members of the public may present written statements to the Committee before or after any meeting of the Committee. Such statements should be sent to: National Hazardous Materials Transportation Advisory Committee, ATTN: Ms. Cecy Ivie, Office of Hazardous Materials Transportation, (DHM–2), Room 8432, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Dated: February 7, 1986.

Sherwood C. Chu,

Executive Director, NHMTAC, Office of Hazardous Materials Transportation.

[FR Doc. 86–3109, Filed 2–11–86; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: February 3, 1986.

The Department of the Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments reqarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Bureau of Alcohol, Tobacco, and Firearms

OMB Number: 1512–0019
Form Number: ATF F 6A (5330.3C)
Type of Review: Extension
Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War
Clearance Officer: Roy J. Betsill (202) 566–7641, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC. 20503
OMB Number: 1515–0118
Form Number: None
Type of Review: Extension
Title: Declaration by Originating Artist, or Seller, or Shipper that Goods Imported are Original Works of Art
OMB Number: 1515–0119
Form Number: None
Type of Review: Extension
Title: Trade Name Recordation
Clearance Officer: Vince Olive (202) 566–9181, U.S. Custom Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 86–3043 Filed 2–11–86; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirement Submitted to OMB for Review

Dated: February 6, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission

may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0048.
Form Number: CF 7529.
Type of Review: Extension.
Title: Carrier Certification and Release Order.
Clearance Officer: Vince Olive (202) 566–9181, U.S. Customs Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20509.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Joseph F. Maty,
Departmental Reports Management Office.
[FR Doc. 86–3002 Filed 2–11–86; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 29
Wednesday, February 12, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 3461, January 27, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., February 10, 1986.

STATUS: Cancelled.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Ashworth, Secretary, Commodity Credit Corporation, Room 3086 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 447-8165.

Dated: February 7, 1986.

Richard L. Ashworth,

Secretary, Commodity Credit Corporation.

[FR Doc. 86-3159 Filed 2-10-86; 11:24 am]

BILLING CODE 3410-05-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:56 p.m. on Thursday, February 6, 1968, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available: (1) For the payment of insured deposits made in the Peoples National Bank and Trust Company, Albia, Iowa, which was closed by the Chief National Bank Examiner, Office of the Comptroller of the Currency, on Thursday, February 6, 1986, and (2) for an advance payment to uninsured depositors and other general creditors of the closed bank equal to 55 percent of their uninsured claims.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(B)).

Dated: February 7, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-3163 Filed 2-10-86; 11:25 am]

BILLING CODE 6714-01-M

3

LEGAL SERVICES CORPORATION

Committee on the Provisions for the Delivery of Legal Services

TIME AND DATE: The meeting will commence at 8:30 a.m., Thursday, February 20, 1986, and continue until all official business is completed.

PLACE: Inn On The Point, Caribbean Room, 7627 W. Columbus Drive, Tampa, Florida 33607.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —October 18, 1985
   —November 7, 1985
3. Report on the Law School Civil Clinical Project
4. Discussion of Alternative Dispute Resolution
5. Presentation on Community Legal Education

CONTRACT PERSON FOR MORE INFORMATION: Daniel M. Rathbun, Staff Coordinator, Division of Policy Development (202) 863-1842.

Date issued: February 10, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86-3209 Filed 2-10-86; 3:10 pm]

BILLING CODE 6820-35-M

4

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The meeting will commence at 12:30 p.m., Thursday, February 20, 1986, and continue until all official business is completed.

PLACE: Inn On The Point, Caribbean Room, 7627 W. Columbus Drive, Tampa, Florida 33607.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —January 30, 1986
3. Lobbying—45 CFR 1612
   —Report from the Division of Policy Development
   —Public comment
   —Recommendations to Board
4. Private Attorney Involvement—45 CFR 1614 (Definition of "private attorney" in § 1614.1(d))

—Report from the Division of Policy Development
   —Public comment
   —Recommendations to Board
5. Denial of Refunding—45 CFR 1625
   —Public comment
6. F.I.F.O.—Proposed 45 CFR 1631
   —Public comment
7. Other Regulations Adopted after April 27, 1984

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Bovard, Counsel, Division of Policy Development, (202) 863-1842.

Date issued: February 10, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86-3210 Filed 2-10-86; 3:11 pm]

BILLING CODE 6820-35-M

5

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The meeting will commence at 9:00 a.m., Friday, February 21, 1986, and continue until all official business is completed.

PLACE: Inn On The Point, Caribbean Room, 7627 W. Columbus Drive, Tampa, Florida 33607.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —January 31, 1986

3. Discussion and Action on the Recommendations of the Operations and Regulations Committee
—Lobbying—45 CFR 1612
—Private Attorney Involvement—45 CFR 1614
4. Public Comment

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863–1839.

Date issued: February 10, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–3211 Filed 2–10–86; 3:12 pm]

BILLING CODE 6820–35–M

6

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1363)

TIME AND DATE: 10:30 a.m. (E.S.T.), Friday, February 14, 1986.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on January 15, 1986.

Discussion Item

1. Low-Income Weatherization Efforts.
2. Staff recommendation regarding program for compliance with Environmental Protection Agency's Stack Height Regulation at Colbert, Johnsonville, Shawnee, and Widows Creek fossil plants.

Old Business Items

*1. Personal services contract with Quality Technology Company, Lebo, Kansas, for services in connection with the initiation and conduct of a TVA Employee Concern Program at TVA facilities.

*2. Supplement to personal services contract with Bechtel North American Power Corporation, Gaithersburg, Maryland, for performance of general engineering, design, and architectural services related to TVA's nuclear, fossil, and hydro power plants, requested by the Office of Engineering.

Action items

A–Budget and Financing

A1. Retention of new power proceeds and nonpower proceeds and payments to the U.S. Treasury in March 1986, pursuant to Section 26 of the TVA Act.

A2. Fiscal year 1986 operating budget financed from appropriations reflecting reductions by Gramm-Rudman-Hollings.

A3. Fiscal year 1986 capital budget financed from appropriations reflecting reductions by Gramm-Rudman-Hollings.

B–Purchase Awards

*B1. Requisition 52—Spot coal for Cumberland Steam Plant.

C–Power Items

C1. Proposed arrangements with Sequoyah Fuels Corporation concerning Uranium Hexafluoride Option Agreement.

C2. Agreement between the Institute of International Education and TVA whereby TVA will conduct an 8-week Energy Conservation Seminar for approximately 30 program participants from underdeveloped countries.

C3. Proposed form agreement amending Revised Home Insulation Program Agreement to include sunscreen option.

C4. Form agreement covering participation by distributors in TVA's New Cycle and Save Program.

D–Personnel Items

*D1. Employee loan agreement with Stone & Webster Engineering Corporation; Memorandum of understanding with Steven A. White; and Personal services contract with Stone & Webster Engineering Corporation relating to TVA's Nuclear Power Program.

*D2. Delegation of authority to increase amount of contract TV–66317A with Quality Technology Company, Inc., Lebo, Kansas, for services in connection with the TVA Employee Concern Program.

D3. Contract with Coopers & Lybrand, Knoxville, Tennessee, for professional accounting services.

E—Real Property Transactions

*E1. Grant of permanent easement to First Utility District of Knox County affecting three parcels of Fort Loudoun Reservoir land in Knox County, Tennessee, totaling 0.6 acres for a proposed sewerline and pumping station—Tract No. XTFL–120PS.

E2. Sale of noncommercial, nonexclusive permanent recreation easements to six applicants affecting a total of 1.07 acres of Tellico Reservoir shoreland in Loudon and Monroe Counties, Tennessee—Tract Nos. XTELR–43RE, –44RE, –46, –47RE, –48RE, and –49RE.

E3. Resolution designating approximately 0.008 acre of Tims Ford Reservoir land located in Franklin County, Tennessee, as surplus and authorizing its sale at public auction by Tennessee Elk River Development Agency as agent of TVA—Tract No. XTMFR–16.

F—Unclassified

F1. Establishment of the proposed TVA Savings and Deferral Retirement Plan; Proposed trust agreement between TVA and the TVA Retirement System; Proposed provisions of the Deferral Plan; Proposed trust agreement for Deferral Plan funds; and proposed amendments to the System's rules and regulations.

F2. Proposed amendments to TVA Retirement System rules and regulations.

F3. Resolution relating to procurement regulations issued by the General Services Administration implementing the Federal Property and Administrative Services Act of 1949.

F4. Subagreement to memorandum of agreement No. TV–23928A between TVA and U.S. Department of the Army, Corps of Engineers covering arrangements for TVA to perform engineering and design work for rehabilitation of Wilson Auxiliary Lock.

* Items approved by individual Board members. This would give formal ratification to Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: February 7, 1986.

John G. Stewart,

Manager of Corporate Administration and Planning.

[FR Doc. 86–3112 Filed 2–10–86; 8:45 am]

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federal register

Wednesday
February 12, 1986

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 870

Cardiovascular Devices; Premarket Approval of the Replacement Heart Valve; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. 85N-0331]

Cardiovascular Devices; Premarket Approval of the Replacement Heart Valve

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the replacement heart valve, a medical device. The agency is also summarizing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and (2) the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Written comments by April 14, 1986; requests for a change in classification by February 27, 1986.

ADDRESS: Written comments or requests for a change in classification are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

SUPPLEMENTARY INFORMATION:

Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: class I, general controls; class II, performance standards; and class III, premarket approval. As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, established as a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515, to premarket approval. (As an alternative procedure for premarket approval, section 515(f) of the act provides for the development of a PDP, the last stage of which is for FDA to declare that a PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or a notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR Part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing (1) the proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If the proceeding is terminated, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act requires that a PMA or a notice of completion of a PDP for the device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturers, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976).

Classification of the Replacement Heart Valve

In the **Federal Register** of February 5, 1980 (45 FR 7948), FDA issued a final rule (21 CFR 870.3925) classifying the replacement heart valve into class III. The preamble to the proposal to classify the device (44 FR 13387; March 9, 1979) included the recommendation of the

Circulatory System Devices Panel (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the replacement heart valve. The preamble to the final rule classifying the device advised that the earliest date by which a PMA for the device (or a notice of completion of a PDP) could be required was September 30, 1982, or 90 days after promulgation of a rule requiring premarket approval for the device, whichever occurred later.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using these factors, FDA has determined that the replacement heart valve, identified in § 870.3925(a), has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the replacement heart valve have an approved PMA or a PDP that has been declared completed.

Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is now proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the replacement heart valve within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the replacement heart valve during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days, of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.1(d), the preamble to any final rule based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c) (1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any replacement heart valve (1) that is not legally on the market on or before that date or (2) that is legally on the market on or before that date but for which a PMA or a notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the replacement heart valve is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

Description of Device

The replacement heart valve is a device intended to perform the function of any of the heart's natural valves, and is used when one (or more) of the natural heart valves is diseased, damaged, or malfunctioning. Human heart valves may become stenotic (the valve leaflets do not open fully and blood flow is impeded) or incompetent (the valve leaflets do not close properly and blood flows back through the valve when the valve should be closed). These conditions may occur due to disease or aging or they may be congenital. The replacement heart valve includes valves constructed of prosthetic materials, biologic materials (e.g., porcine valves), or valves constructed of a combination of prosthetic and biologic materials. The configuration of replacement heart valve products varies a great deal, and the design of a particular valve product is of importance in its effectiveness, as well as the complication rate observed.

In general, the replacement heart valve consists of a housing that is surgically affixed in the heart and a movable portion that performs the valve function, permitting unidirectional blood flow only. Materials used in the device should meet a generally accepted satisfactory level of tissue and blood compatibility, including requirements for adequate surface finish and cleanliness, which may affect the degree of compatibility. Performance characteristics, including blood flow properties and mechanical strength, should be maintained at a generally accepted satisfactory level and should be made known to the user through special labeling.

Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding (1) the degree of risk of illness or injury designed to be eliminated or reduced by requiring the replacement heart valve to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

Degree of Risk

Mechanical failure of replacement heart valves. A replacement heart valve may fail mechanically due to chemical or physical changes in portions of the valve, defects in materials, or faulty manufacturing processes. Occasionally, replacement heart valves fail to work properly due to malposition of the valve at the site of implantation although the valve is structurally intact (Ref. 19). Valve malfunction may occur due to impingement upon the valve mechanism by cardiac tissues or sutures (Ref. 28). Perier et al. reported an incidence of mechanical failure in 300 patients ranging from 0 for prosthetic valves to 5 percent for bioprostheses (Ref. 4). Replacement heart valves tend to fail in characteristic ways. The failure mode may be slow or sudden. If the replacement heart valve fails slowly, congestive heart failure may result. Reoperation will be required. Rapid failure results in the need for urgent reoperation, or may result in death. The reason for failure may be that of the valve sticking in the open position, sticking in the closed position, fracture of the occluder cage, or migration of the movable portion from the valve mechanism into the circulation (Ref. 20).

Unacceptable hemodynamic performance. A replacement heart valve may produce unacceptable

hemodynamic performance, thus eliminating or reducing the benefits expected from surgery. Unacceptable obstruction to forward blood flow through the valve or unacceptable amounts of regurgitant flow may occur. These conditions may arise from replacement heart valve design, improper valve size for a particular patient, thrombus formation, perivalvular leak, or mechanical failure of the valve (Ref. 17). Attempts to achieve better hemodynamic performance have been one of the driving forces in the evolution of valve design.

Unacceptable hemodynamic performance usually requires reoperation for correction.

Perivalvular leak. Leakage of blood between the fixed portion of a replacement heart valve and heart tissues may occur. The incidence of this complication depends on replacement heart valve design, the condition of heart tissue at the site of implantation, and surgical technique (Ref. 12). A leak may also result from infection around the valve. Perivalvular leaks may develop early or late after implantation of a replacement heart valve, and may be of mild to severe degree. Leaks may be associated with hemolytic anemia or congestive heart failure of such severity as to require reoperation (Ref. 11).

Kastor et al. reviewed records respecting 203 patients in 1968 and found that the incidence of perivalvular leaks was 13 percent in patients receiving aortic, and aortic plus mitral, valve replacement (Ref. 11). Recently, the incidence at the Massachusetts General Hospital as reported by Johnson et al. was less than 1 percent (Ref. 13).

Surgical procedure. The operation required to implant a replacement heart value is not without risk. Cohn et al. reported operative mortality as 6.4 percent in a series of 640 patients undergoing aortic valve replacement (Ref. 3). The principal causes of death included myocardial infarction, low cardiac output, hemorrhage, and infection. Chaux et al. noted 6.6 percent mortality in 198 patients in the first 30 days after surgery; often the cause of death was from cardiac disease but not from the replacement heart valve (Ref. 29). Perier et al. observed approximately 15 percent mortality in 300 patients within 30 days after surgery; heart failure and valve problems were reported as the most common causes of death and were about equally represented (Ref. 4).

Thrombus (blood clot) formation on the device. Clotting occurs in association with replacement heart valves due to turbulence, stagnation, eddy currents, and shearing forces which may damage cellular elements in the blood and release biochemical factors that evoke the normal clotting reaction. In addition, valve materials may encourage clotting (Refs. 1, 2, and 3). Patients receiving replacement heart valves are usually placed on anticoagulant drugs to minimize clotting. Anticoagulant therapy may also produce morbidity as discussed below.

Thrombus formation on the valve may interfere with the action of the valve by producing obstruction of the valve opening (stenosis) or incomplete closure of the valve (incompetence) (Ref. 18). Such events commonly require reoperation. Stenosis or incompetence may occur slowly, or suddenly with catastrophic results.

The incidence of significant valve thrombus formation varies with replacement heart valve design and whether the mitral, aortic, or tricuspid valve is replaced (Ref. 26). Cohn et al. observed a figure of 0.34 percent per patient-year for tilting disc valves in studying 912 patients (Ref. 3). Perier et al. observed a thrombosis rate of 1.7 percent per patient-year in a study of 100 patients with various valves (Ref. 4).

Thromboembolism. Portions of clots formed in the heart may break off and travel through blood vessels to other organs which are then damaged by loss of blood supply. The greater the loss of blood supply the greater the damage to the affected organ. Examples of such injury include interference with brain circulation resulting in stroke and possible paralysis; loss of circulation to the heart resulting in myocardial infarction; loss of circulation to abdominal organs producing loss of function of portions of the digestive tract; loss of circulation to the extremities; and pulmonary infarction as a result of loss of circulation to the lungs. Thromboembolism may range from mild to severe, leading to transient injury or even death.

The incidence of thromboembolism is affected by replacement heart valve design and location and is decreased by the use of anticoagulant drugs. The reported incidence of fatal and nonfatal thromboembolism varies widely and is affected by statistical reporting methods. Edmunds, in a review of the literature respecting risks associated with replacement heart valves, tabulated rates varying from 0 per patient-year to 6.2 percent per patient-year for aortic valve prostheses (Ref. 10). Figures for mitral valve prostheses varied from 0.9 percent to 16.6 percent per patient-year, with most of the figures in the region of 4 percent per patient-year.

Anticoagulant complications. Implantation of replacement heart valves constructed entirely of prosthetic materials must be accompanied by the long-term use of anticoagulant drugs, which have been shown to significantly reduce the incidence of thrombosis and thromboembolism associated with the device (Refs. 6 and 10). Lefrak and Starr cited two reported series in which anticoagulants decreased the incidence of embolism from 20 percent to 7 percent (Ref. 7). Others have observed that patients with replacement heart valves have a threefold to sixfold increase in thromboembolic episodes without anticoagulants (Ref. 10).

The use of anticoagulants requires careful medical followup, and presents the hazard of bleeding episodes. Bleeding may occur into the brain, the gastrointestinal tract, the genitourinary system, and other locations in the body. Depending on severity and location, bleeding episodes may be mild to life threatening, and cause temporary or permanent disability (Ref. 10). Edmunds' review of the literature revealed an incidence of fatal bleeding episodes ranging from 0 to 1 percent per patient-year, with a mean of 0.17 percent per patient-year (Ref. 10). The weighted mean of 2.19 percent per patient-year was observed for serious, nonfatal hemorrhage due to anticoagulation.

Hemolytic anemia. A replacement heart valve produces some degree of hemolysis (breakdown of red blood cells) due to the exposure of blood to an artificial surface, turbulent blood flow, and shear forces (Ref. 8). Small degrees of hemolysis may not require treatment. Larger amounts of hemolysis may cause anemia requiring medication or replacement of the valve. Reoperation was required for anemia in 1.6 percent of 250 patients in 1 series, and 0.4 percent of 1,187 patients in another (Ref. 9).

Infection. A replacement heart valve may become the site of infection, either at the time of surgery, or later as a result of dental procedures, intravascular catheterization, or surgery elsewhere in the body (Ref. 14). Johnson et al. report that the incidence of infection is less than 2 percent, but often the outcome is fatal (Ref. 15). Lefrak and Starr report that mortality is 80 percent from infections occurring in the first few weeks after valve replacement (Ref. 16). The presence of infection can lead to other injury such as perivalvular leaks, valve disruption, and congestive heart failure, and can cause thrombus formation and thromboembolism even in the presence of anticoagulants. Treatment is reoperation as a rule, but

prolonged antibiotic therapy alone is occasionally curative (Ref. 16).

Benefits of the Device

The benefits of the replacement heart valve are unquestioned in patients with valvular heart disease. Without the device, many such patients have a poor prognosis characterized by congestive heart failure, arrhythmias, chest pain, loss of consciousness, embolic phenomena, and death, as detailed by Wheeler et al. (Ref. 21). For some abnormalities of the natural heart valve, there is no satisfactory alternative to valve replacement (Ref. 22). Deformity of natural heart valves, when severe enough to produce significant stenosis or incompetence, is irreversible. The abnormal circulatory dynamics that result can be controlled by medication only to a limited degree. Following implantation of a replacement heart valve, many patients become asymptomatic and others experience a marked improvement in heart function and exercise tolerance. Oyer et al. cited improvement in New York Heart Association Class (a rating of cardiac function, with class 1 representing optimum function) from 2.6 to 1.2 (mean) after aortic valve replacement, and from 2.9 to 1.3 (mean) after mitral valve replacement in a series of 1,285 patients (Ref. 25).

As noted by Bristow and Kremkau, the hemodynamics of heart function, such as pressures in the heart, generally become normal at rest. During exercise, postoperative hemodynamics are improved as compared with preoperative values. Pressure gradients across the replacement heart valve are improved over the preoperative condition, although small pressure gradients remain (Ref. 26).

Information about the clinical course and survival of patients with untreated valvular heart disease has to be drawn from older data gathered before the use of replacement heart valves as the standard treatment became widespread. As an example of the effect of valvular heart disease on mortality, patients with aortic stenosis have an average survival of 5 years or less after the onset of symptoms; patients with aortic regurgitation have a 50 percent mortality 5 years or less after the onset of symptoms (Ref. 23). By contrast, patients who receive an aortic valve replacement have a 44 percent 15-year actuarial survival (Ref. 24). Another series showed 50 percent actuarial survival at 10 years for both mitral and aortic valve replacement (Ref. 27). Although these data are not strictly statistically comparable, the great difference in length of survival is of interest.

Discussion of Risks and Benefits

FDA classified the replacement heart valve into class III because insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has weighed the probable risks and benefits to the public from use of the replacement heart valve and believes that the studies discussed above present evidence of significant risks associated with the use of the device.

FDA believes that the use of the replacement heart valve is effective in appropriate patients with valvular heart disease; in many such patients implantation of a valve represents the only effective treatment. The safety and effectiveness of a particular replacement heart valve, however, is related to its design and composition and to the manufacturing processes involved in its production. These facts, together with FDA's experience with premarket approval of postamendments replacement heart valves, confirm FDA's view that reasonable assurance of the safety and effectiveness of a particular replacement heart valve requires premarket approval.

Applicants should submit any PMA for a replacement heart valve product in accordance with FDA's "Guideline for the Arrangement and Content of a PMA Application." Any PMA for such a product is to contain the information required by section 515(c)(1)(A) of the act. Further guidance regarding the type of information required to be submitted is contained in "Replacement Heart Valves—Guidelines for Data to be Submitted to the Food and Drug Administration in Support of Applications for Premarket Approval" (available on request from Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910).

Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 of FDA's regulations governing classification of devices (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in FDA's proposed rules to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402, 53411; November 26, 1982).

A request for a change in the classification of the replacement heart valve is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by February 27, 1986.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the replacement heart valve is submitted, the agency will by April 14, 1986, after consultation with the appropriate FDA advisory committee and by order published in the **Federal Register**, either deny the request or give notice of its intent to intitiate a change in the classification of the advice in accordance with section 513(e) of the act and § 860.130 of the regulations.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Johnson, R.A., E. Haber, and W.G. Austen, editors, "The Practice of Cardiology," p. 530, Boston, 1980, Little, Brown & Co.

2. Lefrak, E.A., and A. Starr, "Cardiac Valve Prostheses," p. 383, Boston, 1980, Little, Brown & Co.

3. Cohn, L.H., et al., "Early and Late Risk of Aortic Valve Replacement," *Journal of Thoracic and Cardiovascular Surgery*, 88:695–705, 1984.

4. Perier, P., et al., "Comparative Evaluation of Mitral Valve Repair and Replacement with Starr, Bjork, and Porcine Valve Prostheses," *Circulation*, 70 (supp. I), 1187–1198, 1984.

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6. Salazar, E., et al., "The Problem of Cardiac Valve Prostheses, Anticoagulants, and Pregnancy," *Circulation*, 70 (supp. I), 1169–1177, 1984.

7. Lefrak, E.A., and A. Starr, "Cardiac Valve Prostheses," p. 385, New York, 1979, Appleton-Century-Crofts.

8. Lefrak, E.A., and A. Starr, "Cardiac Valve Prostheses," p. 374, New York, 1979, Appleton-Century-Crofts.

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10. Edmunds, H.L., "Thromboembolic Complications of Current Cardiac Valvular Prostheses," *Annals of Thoracic Surgery*, 34:96, 1982.

11. Kastor, J.A., et al., "Perivalvular Leaks and Hemolytic Anemia Following Insertion of Starr-Edwards Aortic and Mitrals Valves," *Journal of Thoracic and Cardiovascular Surgery*, 56:279, 1968.

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14. Stiles, G.M., et al., "Thermodilution Cardiac Output Studies as a Cause of Prosthetic Valve Bacterial Endocarditis," *Journal of Thoracic and Cardiovascular Surgery*, 88(6):1035–1036, 1984.

15. Johnson, R.A., E. Haber, and W.G. Austen, editors, "The Practice of Cardiology," p. 538, Boston, 1980, Little, Brown & Co.

16. Lefrak, E.A., and A. Starr, "Cardiac Valve Prostheses," pp. 371–374, New York, 1979, Appleton-Century-Crofts.

17. Lefrak, E.A., and A. Starr, "Cardiac Valve Prostheses," pp. 386–390, New York, 1979, Appleton-Century-Crofts.

18. Hartzler, G.O., et al., "Nonsurgical Correction of a 'Frozen' Disc Valve Prosthesis Using a Catheter Technique and Intracardiac Streptokinase Infusion," *Journal of the American College of Cardiology*, 4(4):779–783, 1984.

19. Aldrete, V., "Intermittent Aortic Regurgitation With Tilting Disc Valves," (letter), *Journal of Thoracic and Cardiovascular Surgery*, 88(3): 458–459, 1984.

20. Lefrak, E.A., and A. Starr, "Cardiac Valve Prostheses," pp. 386–389, New York, 1979, Appleton-Century-Crofts.

21. Wheeler, E.D., et al., *in* "The Practice of Cardiology," edited by R.A. Johnson, E. Haber, and W.G. Austen, pp. 435 and 479, Boston, 1980, Little, Brown & Co.

22. Wheeler, E.D., et al., *in* "The Practice of Cardiology," edited by R.A. Johnson, E. Haber, and W.G. Austen, p. 496, Boston, 1980, Little, Brown & Co.

23. Wheeler, E.D., et al., *in* "The Practice of Cardiology," edited by R.A. Johnson, E. Haber, and W.G. Austen, pp. 479 and 488, Boston, 1980, Little, Brown & Co.

24. Teply, J.F., et al., "The Ultimate Prognosis After Valve Replacement: An Assessment at Twenty Years," *Annals of Thoracic Surgery*, 32(2):111–119, 1981.

25. Oyer, P.E., et al., "Long-term Evaluation of the Porcine Xenograft Bioprosthesis," *Journal of Thoracic and Cardiovascular Surgery*, 78:343–350, 1979.

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27. Hanson, H.E., et al., "Long-term Follow-up After Open Heart Valve Surgery," *Scandinavian Journal of Thoracic and Cardiovascular Surgery*, 18:105–110, 1984.

28. Jarvinen, A., et al., "Postoperative Disc Entrapment Following Cardiac Valve Replacement—A Report of Ten Cases," *Journal of Thoracic and Cardiovascular Surgery*, 32:152–156, 1984.

29. Chaux, A., et al., "The St. Jude Medical Bileaflet Valve Prosthesis," *Journal of Thoracic and Cardiovascular Surgery*, 88:706–717, 1984.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this proposed rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. The agency believes that eight firms will be affected by this proposed rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

Comments

Interested persons may, on or before April 14, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before February 27, 1986, submit to the Dockets Management Branch a written request to change the classification of the replacement heart valve. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 870

Cardiovascular devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR Part 870 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; § 870.3925(c) also is issued under secs. 501, 515, 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)); 21 CFR 5.10.

2. In Part 870, § 870.3925 is amended by adding new paragraph (c), to read as follows:

§ 870.3925 Replacement heart valve.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (a date 90 days after date of promulgation of a final rule) for any replacement heart valve that was in commercial distribution before May 28, 1976, or that has on or before (a date 90 days after date of promulgation of a final rule) been found to be substantially equivalent to a replacement heart valve that was in commercial distribution before May 28, 1976. Any other replacement heart valve shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: November 6, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–3006 Filed 2–11–86; 8:45 am]

BILLING CODE 4160–01–M

Federal Register

Wednesday
February 12, 1986

Part III

Department of Education

Office of Special Education and Rehabilitative Services

National Institute of Handicapped Research; Final Funding Priorities for Research and Training Centers for Fiscal Year 1986; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

National Institute of Handicapped Research; Final Funding Priorities for Research and Training Centers for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education announces final funding priorities for research activities to be supported by the National Institute of Handicapped Research (NIHR) through the Research and Training Centers program in Fiscal Year 1986. NIHR is required under the Rehabilitation Act of 1973 as amended, to develop a long-range research plan which identifies rehabilitation research that needs to be conducted and to determine funding priorities which will facilitate the support of these activities within available resources. These priorities are derived from the NIHR Long-Range Plan and are articulated within the goals, objectives, and research activities specified in the Plan. These priorities are for the Research and Training Center (RTC) program only; priorities which NIHR expects to support under other programs were published on November 13, 1985 at 50 FR 46810 and on November 26, 1985 at 50 FR 48738.

EFFECTIVE DATE: These priorities will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3070), Washington, DC 20202. Telephone (202) 732–1139; Deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

SUPPLEMENTARY INFORMATION: Under this program, awards are issued to public and private agencies and organizations, including institutions of higher education. NIHR is permitted to make awards for periods up to 60 months.

The purpose of the awards is to support the establishment and operation of Rehabilitation Research and Training Centers to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services.

The three final priorities contained in this notice represent areas in which NIHR intends to support Research and Training Centers through grants or cooperative agreements. Research and other activities which NIHR intends to procure through contracts will be announced by Requests for Proposals published in the *Commerce Business Daily;* other research priorities which NIHR intends to support under other grant program mechanisms were published on November 13, 1985 at 50 FR 46810 and on November 26, 1985 at 50 FR 48738.

NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priorities contained in this notice cover research and related activities to be conducted through Rehabilitation Research and Training Centers. Following is a brief description of this program.

Research and Training Centers. (RTCs) have been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RTC's must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally, each Center conducts a program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as undergraduate and graduate texts and curricula, in-service training, and continuing education. Each RTC will conduct a program of rehabilitation research training which will contribute to the number of qualified researchers working in the area of rehabilitation research and will also conduct state-of-the-art studies in relevant aspects of their priority areas.

Priorities

Cardiovascular Rehabilitation

Currently, 4 million persons in the United States have some manifestation of coronary heart disease. Of these, approximately 600,000 will survive a myocardial infarction; while some of these survivors will return to their customary activities after convalescence, others will experience complications which will interfere with their rehabilitation. Prior evidence indicates that approximately one-third of the survivors will continue to experience cardiac symptoms in performing their daily activities, and may experience psychological difficulties which further impede their return to full functioning.

Research on cardiac improvement is needed to identify physical and psychological factors associated with reinfarction and rehabilitation, to refine quantitative methods for assessing cardiac performance, to develop and quantify norms for the demands made upon cardiac capacity by certain kinds of physical activity and psychological stress, and to study differences among various subgroups of survivors of myocardial infarction.

An absolute priority will be given to applications for an RTC which would:

—Evaluate the benefits and hazards of various prescribed exercise testing programs on survivors of myocardial infarction, including the changes that may be necessary to strengthen the protocols developed for exercise testing.

—Determine the factors in heart lesions that lead some patients to limit their exercise or fail to achieve normal exercise performance for their age following definitive coronary artery or valve repair;

—Determine the predictors that reflect progression of the athero-sclerotic process or additional impairment;

—Identify patient personality characteristics that enhance rehabilitation and those that retard it;

—Develop effective interventions to prevent and treat complications of cardiovascular disease and infarction;

—Identify and disseminate strategies which lead to more rapid return to normal daily activities and return to full employment following myocardial infarction; and

—Identify any technological devices which aid the rapid return to full employment after myocardial infarction.

Rehabilitation of Blind and Severely Visually Impaired Individuals

The blind and visually impaired population, particularly that of working age individuals, represents one of the biggest challenges to public and private rehabilitation agencies in the United States today. About two-thirds of this population is not working, and

underemployment has been documented to be a significant problem for this group.

Approximately 400,000 persons report a work disability due to visual problems. This population is projected to increase by 8 percent between 1980 and 1990 with the largest increase in the 20 to 44 year old category. Some additional data reported by NIHR-supported researchers indicate that many blind and visually impaired individuals served by private and public rehabilitation agencies have additional disabilities with resulting functional limitations that increase the challenge to the rehabilitation service delivery system. The problem is further complicated by the lower level of education of visually impaired persons as compared to other working-age Americans. Sixty percent of blind and severely visually impaired persons of working age have not graduated from high school. The intrinsic attributes of blindness and visual impairments such as reduced visual acuity are made more complex by the extrinsic attributes of blindness such as negative stereotyping and the failure of society to acknowledge the potential productivity of blind and visually impaired people. An RTC is needed to address the rehabilitation needs of blind and visually impaired youth in transition to the workplace and blind and visually impaired adults of working age, including those of older working age.

An absolute priority will be given to applications for an RTC which would:

—Identify and classify the career transition problems of blind and visually impaired youth and adults in order to develop strategies which may be used by consumers and professionals to reduce the unemployment and underemployment problems of blind and visually impaired persons:

—Identify management practices and other job tasks performed by blind persons in the operation of business enterprises established under the authority of the Randolph-Sheppard program and identify, introduce, and evaluate state-of-the-art technology which could be used to facilitate the increased productivity of the Business Enterprise Program:

—Develop long-term and short-term multidisciplinary training programs for rehabilitation and eye care professionals, educators, especially vocational educators, employers, and blind and visually impaired consumers concerned with rehabilitative and educational services:

—Develop curricula for graduate level courses in rehabilitation counseling of blind persons as well as short and long-term inservice training, continuing education, and other training mechanisms for professionals working with blind persons;

—Develop work assessment devices and techniques and study existing techniques to assist blind and visually impaired consumers and professionals to identify appropriate career objectives, training and employment opportunities;

—Develop a low vision database relating demographic characteristics, diagnoses, aids prescribed, treatment intervention, client employment history, and visual characteristics of the job environment to rehabilitation outcome;

—Identify the costs in time and money associated with blindness and visual impairment and the relationship of the costs of other factors, e.g., unemployment rate, in the United States as they affect the rehabilitation process;

—Study the Business Enterprise Program of the State licensing agencies in the areas of investment patterns, site selection, and facility design and develop training materials for inservice and short-term training programs based on best practices and innovative techniques;

—Provide technical assistance to State and private rehabilitation agencies and service providers through the assessment of factors in the rehabilitation process which lead to the competitive employment of blind and visually impaired individuals, especially those who are multiple handicapped;

—Investigate strategies and techniques for assessing the visual functioning of the low vision individual in the workplace and develop procedures to assist rehabilitation practitioners and consumers to use these strategies and techniques in the job modification and accommodation process;

—Investigate areas of current concern to those involved in the rehabilitation of deaf-blind persons and provide state-of-the-art training opportunities for those service providers who are involved in the career development and job placement of deaf-blind persons; and

—Identify the roles and functions of rehabilitation teachers, orientation and mobility instructors, and rehabilitation counselors for the blind in public and private rehabilitation agencies to be used as a base for developing curricula for long-term and short-term training programs.

Rehabilitation of Deaf and Hearing-Impaired Individuals

The estimated 14.2 million individuals with hearing impairment comprise the largest single disability group in the United States. A Research and Training Center on Deafness and Hearing Impairment is needed to address problems of the vocational, personal, social, and community adjustment problems resulting from severe hearing impairment and to disseminate and promote the use of research findings and knowledge through training and materials development.

An absolute priority will be given to applications for an RTC which would:

—Assess the factors which promote successful transition of deaf and severely hard-of-hearing individuals from educational and training settings to the work world, and devise and test rehabilitation interventions to facilitate this transition.

—Develop and test models for developing long-term supportive linkages between Vocational Rehabilitation agencies and employers to enhance the probability of successful work adjustment and career development for deaf and severely hard-of-hearing individuals;

—Assess the rehabilitation needs of, and identify effective rehabilitation interventions to address, the chronically unemployed, underemployed, and displaced deaf or severely hard-of-hearing worker;

—Devise strategies to assist families and rehabilitation personnel to work cooperatively and effectively in providing independent living or rehabilitation services that make optimal use of the client's personal resources (community, peers, interests, and abilities);

—Develop and test models to assess and address the needs of deaf and severely hard-of-hearing individuals to acquire the social and community living skills necessary for successful psychosocial functioning in the workplace and the community.

—Identify and evaluate innovative and effective practices in independent living services for severely disabled deaf and deaf-blind individuals in the United States and increase the use of these practices in other communities through training, dissemination, and technical assistance networks;

—Develop and test computer—assisted occupational information and exploration systems in the career guidance and counseling of deaf and severely hard-of-hearing rehabilitation clients;

—Develop and test the use of a computerized statewide job bank which deaf applicants can access to obtain listing of employers who hire and/or are receptive to employing qualified deaf workers;
—Develop, validate, and calculate norms for a manual communication test battery which can be used in the rehabilitation assessment of the receptive and expressive sign language skills of deaf individuals;
—Provide technical assistance to State rehabilitation agencies and other service providers in the development and implementation of rehabilitation services for deaf and severely hard-of-hearing individuals; and
—Develop training programs for rehabilitation personnel in the core areas of: (1) Rehabilitation evaluation, (2) rehabilitation guidance, counseling, and placement, and (3) personal and social adjustment strategies and interventions.

Summary of Comments and Responses

On September 16, 1985, the Secretary published three proposed priorities in the **Federal Register** (50 FR 37571) for public comment. NIHR received 35 comments during the comment period. The substantive comments were generally favorable. There were, however, some negative comments relating to information which was contained in the Notice of Transmittal of Applications, which was published in the same issue of the **Federal Register.** These comments concerned factors as the amount of funds reserved for the Centers or other items not directly pertinent to the proposed priorities. The substantive comments and the Secretary's response are summarized below:

Comment: One commenter stated that further research in the area of exercise testing and documentation of the natural history of disease and recovery for survivors of myocardial infarction would be redundant.

Response: No change has been made. There are gaps in knowledge about the use and impact of exercise in cardiac patients, including gaps in knowledge about the effects of exercise in various subgroups of the population and in combination with other types of treatment.

Comment: This commenter also suggested that more emphasis should be placed on the development and testing of new intervention for use with survivors of myocardial infarctions.

Response: No change has been made. The Secretary notes that the priority provides for a broad scope of work "to identify and disseminate strategies which lead to a more rapid return to normal daily activities and return to work . . ." which would encompass any research on new interventions. The objectives described in the priority statement are considered the minimum scope of activities, but are not meant to restrict the Center in terms of other relevant research.

Comment: One commenter urged that the Center on deafness and hearing impairment be made a research center on all communicative disorders.

Response: No change has been made. This Center is intended to focus primarily on the rehabilitation and vocational problems of deaf individuals. NIHR has several other projects and Centers which address problems of hard-of-hearing persons and those with language disorders.

Comment: One commenter recommended that the Center on Rehabilitation of Blind and Severely Visually Impaired Individuals also focus on the deaf-blind.

Response: No change has been made. The statement of the priority does include some activities related to the deaf-blind population. The principal thrust of this Center is intended to be the vocational and other rehabilitation problems of blind and visually impaired individuals; the research and training issues involved would be substantially different if the focus were on deaf-blind individuals.

(29 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: February 6, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-3072 Filed 2-11-86; 8:45 am]

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Wednesday, February 12, 1986

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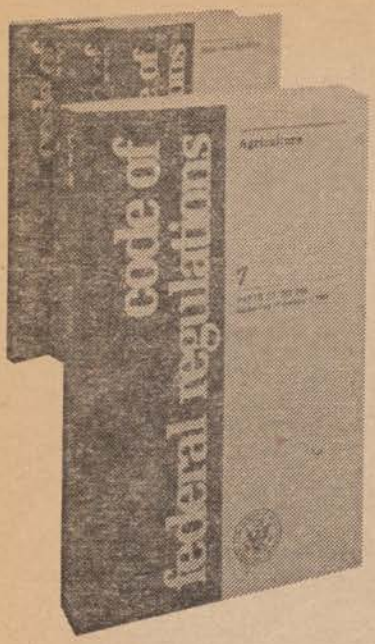
H.R. 4027/Pub. L. 99–242

Extending the waiver authority of the District of Columbia Revenue Bond Act of 1985 to certain revenue bond acts of the District of Columbia, and for other purposes. (Feb. 7, 1986; 100 Stat. 4; 1 page) Price: $1.00



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Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		